



Imprimatur,

Decemb. 27.
1670.

Guli. Fitz. Gerald Rev. in Christo
Patri Archiepisc. *Dublin.* toti-
usque *Hiberniæ* Domino, D.
Cancellario a Sac. Domest.



2
EPISCOPAL JURISDICTION

Asserted,

According to the right Constitution thereof,

BY

His Majesties

Laws, both Ecclesiastical and Temporal.

OCCASIONED

By the Stating and Vindicating of the

BISHOP of *Waterford's*

[Hugh Gore]
CASE,

With the Mayor and Sheriffs of *Waterford.*

*By a Diligent Enquirer into the Reasons and
Grounds thereof. [Arthur Stanhope]*

Ne quid falsum audeant, Ne quid verum non audeant.

My Lord *Coke's* Rule given to all such as take upon them to
write: *Jurisdiction of Courts*, cap. 9.

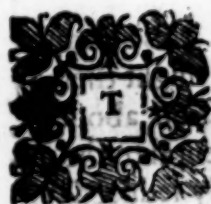
DUBLIN,

Printed by *Benjamin Tooke*, Printer to the King's most Excellent Majesty; And are to be Sold by *Mary Crooke*,

in the Street MDCCLXXI

THE
BISHOP of WATERFORDS
CASE
WITH THE
MAYOR and SHERIFFS
OF
WATERFORD,

Stated and Undicated, &c.



He late Proceedings at Waterford, betwixt the Bishop, and the Mayor and Sheriffs of that City, making a great Noise abroad, and furnishing Discourse for most Companies that met together; I made it awhile my business, to enquire into the true state thereof; the better to discover, if I could, what proportion the Matter it self held with the Talk made, and

Censures passed by Men thereon: While I was thus employed, I could not choose but observe, That there was still retained too much of the old Malignity of spirit; and how readily some persons caught at any occasion, to inveigh against *Bishops*, and traduce both their *Order*, and *Jurisdiction*. Moreover, That they who were most loud and clamorous against the *Bishop of Waterford* proceedings in this Case, were indeed such a least understood the true Grounds and Reasons thereof; insomuch, as when they have vented their Clamors with greatest eagerness, they have been known for all that, to ask, **What it was that the Bishop did?** Whereas they who had attained some competent knowledge therein, were more moderate and reserved.

Hereupon I judged, That this Enquiry would be seasonable, because I might thereby be able to give my self satisfaction about it, and, peradventure, be instrumental to the undeceiving the unwary and easily seduced; or, convincing the wilfully erring persons therein: This, I think, will be no difficult Task to perform; if Men will but once be brought to think that they may mistake, or that they may

may be too much byassed with prejudices; and, thereupon, resolve to act like what they would be thought to be, ingenuous and rational Men. In prosecuting of this Design, I propose two things as the principal Subjects of this Enquiry; The one is, concerning the matter of Fact; The other is, concerning the matter of Right in these proceedings.

Concerning the matter of Fact, my entrance into that shall be, by premising a passage or two, relating to the preceding, and to this present *Bishop*; which may inform us what manner of welcome both were saluted withall, at their first coming to *Waterford*.

When at His MAJESTIES Happy Restauration, the late *Bishop* first came thither, the graver and better Sort gave him a chearful Entertainment; but, a perverse Generation, very prevalent in that City, treated him at a far different rate; I think, no Usages could be more barbarous and rude, than he experienced there: Frequent Affronts were offered him, *Libels* spread abroad of him, *Papers of Querries* sent and tendred to him; such, as were full of ridiculous Non-sense, yet full of Petulancy and Malice.

The industry and travel of that *Pious Prelate*, to reduce to, and settle that People in their Duty and Obedience to Gods Church, and Gods Anointed; His Assiduity in Preaching; His Exemplariness of Living, are sufficiently known to all: The base slighting of which, will (I fear) lie heavy one day on the Consciences of some Men.

When this *Prelate* was one time about to discharge two solemn Offices, the one of *Preaching*, he found his **Pulpit**, foully defiled with **Excrements** (so as must not be named) and the other Office of *Baptising*, the **Font** was defiled in the like beastly and unseemly manner. These, and many other unkind and ungrateful Usages, contributed not a little to the shortning of his life; and (God forgive me if I judge uncharitably) the same, I think, have been continued; to work the like effect on his Successor; and, peradventure, they would be more encreased; if they could but accomplish the Eradication of the whole Order, together with the extinction of both their persons.

The worthy *Prelate*, now in the See of **Waterford**, at his Entrance thereinto, having first inspected the state of his Diocess at large,
and

and set in order the Affairs thereof. His next care employed him about the Cathedral Church of **Waterford**, where too he met with the like barbarous welcome that his Predecessor had done before ; for shortly after his first coming to **Waterford**, going to Solemn Prayers at the Cathedral, attended with many of his Clergy, he found the way that he must walk, from the Body of the Church into the Choire towards the Bishops Throne, **most beastly defiled with Excrements again :** But not discouraged herewith, the Repairing, Beautifying, and Adorning of that Church, is that which he is seriously intent upon ; so as that in a short time, he brought the Choire thereof (at no little Expence and Charge of his own) to that comely and graceful Uniformity that it is now to be seen in ; such, as may at once delight and awe the Beholders, so well attemper'd together are some innocent and pleasing Ornaments, with the more solemn and grave Furniture added thereto ; for which, he received shortly after, the Thanks of a **scurrilous Libel.**

The Body of that Cathedral, together with some Out-Chappels adjoining thereto, the
Tower

Tower and Bells do by Ancient *Charter-party* belong to the Corporation of **Waterford**, to keep in good and decent Repair : In lieu of which, the said Corporation of **Waterford**, have the disposing of all Burying places therein, and receive to their own use such Emoluments and Profits as do accrue thereby : And , as I have been Credibly informed from a knowing person, that has inspected the Ancient Records of that City, the Corporation became Enfeoffed in certain Lands, bestowed for these purposes, namely, **To maintain a Publick School-master ; And, To uphold in good and constant Repair, the Body of the Cathedral, Out-Chappels, Tower and Bells,** as is before mentioned.

The *Bishop* being Religiously zealous in prosecuting this good Work which he had begun, intimates to the *Mayor*, and rest of the Corporation of **Waterford**, the Duty belonging to them in behalf of the Church ; he is very instant, and pressing with them , that what in Duty they were obliged to do, they would with Alacrity and Chearfulness enter upon : But, Excitements to Acts of Devotion, and such pious Works as this, find but cold

Enter

Entertainment in these dayes of languishing Piety and Charity : And so truly they did with these Men, They alledging their present Poverty, and exhausted Revenue, whereby they were rendred unable to undertake so chargeable a work : Nay, there wanted not some, who gave it out openly enough, That the proceeding in such a Design, was, if not unnecessary, yet then unseasonable : And that if it must be done, the **Clergy**, who had got an ample Revenue in the City, were the fittest to effect the same.

Notwithstanding these little Shiftings and Tergiversations used by these Men, the *Bishop* is not discouraged yet in his Religious endeavours ; but persisting still in his purpose, what by entreaties and perswasions, his own good example, and other rational motives, he at last prevails with them. Hereupon, both to ease the Charge of the Corporation in some measure, and to forward the Work, Voluntary Subscriptions are gathered from many persons, as well Strangers, as others, Citizens of **Waterford**, for the new Casting and Hanging a Ring of Bells, the *Bishop* himself subscribing very liberally and bountifully thereto ; and from his particular Friends, procuring many

ny other considerable Subscriptions, which Subscriptions, as I have heard, came to near *One hundred pounds*. To this was added, By the Mayor and City-Council, a great Tax or Rate (which, together with the Subscriptions, might make in all *Two hundred and seven pounds*, or thereabouts) and by them Levied upon the Inhabitants of the City. I dispute not how justifiable the making and Levying this Tax was, nor why that which ought to have come from the Chamber and Publick Revenue of the City, was to be supplied by a personal Tax upon the People; whether this was done to make good their former Allegation of Poverty, or whether this was done to save the City-stock, I take not upon me to determine; perhaps it was for both these ends, and perhaps it was for one more (like the Actings of a wise and politick People) namely, to reflect the *Odium* thereof from the querulous Inhabitants upon the Bishop, as if by his forcible impulse and instigation, they were necessitated to this extraordinary course: But while these things were thus carrying on, one remarkable matter intervened, well worthy here to be inserted and taken notice of.

When

When the Bells in their metal were to be sent to **Bristol** for the New-casting of them, and (as I have before touched) Subscriptions had been made by many persons both of that City, and such as were strangers for the very purpose of New-casting, and Hanging of the Bells; yet such were the sordid and penurious Designs of the chief Leaders of Affairs in **Waterford**, whether to intervert the money designed for that, to some other purpose, or to save their own slender proportions concerned therein, the Mayor that then was, that is, he that was Mayor in the Year *One thousand six hundred sixty and seven*: This person, the Mayor (I say) dealt under-hand with one **Aram** (in whose Ship the Bells were to be carried over) to this purpose; That he should reserve a certain quantity of the metal, which would in value be sufficient to defray the Charges of Casting the rest; and the remainder to be made use of for such a Ring of Bells as had been there afore time, which (was said) would serve the turn well enough: For this we are to know, that besides the metal of five Bells that were taken out of the Tower of the Cathedral of

Waterford, the Bishop had added seven Bells more, that had been retrieved out of the hands of some private persons, who in the late times of Confusion and Demolishment, had secured them in their own possession.

This pretty thifty Project, the said **Aram** acquaints the Bishop withall, and shews him the then *Mayors* instructions under his hand, and desires the Bishops advice and direction what to do therein : The Bishop hereupon sends to the *Mayor*, desires his company, speaks with him, urged to him the baseness and unworthiness of the thing he had given direction for, brought the *Mayor* to a sudden abashment and confusion; and so altered quite, and prevented the Design of defraying the Charge of Casting the Bells, by withholding a great part of their own metal. And over and above that, spoiled their Plot, of their being **Gainers** of **Two hundred pound and upward** (viz. by the Subscriptions and Tax before mentioned) which in likelihood would have passed current, if this **holy Cheat** had not been discovered; for this is to be further observed, That besides the voluntary Subscriptions before spoken of, the great Tax that I said was laid on the people of **Water-**

Waterford, was pretended to be Subsidiary, and as a Supplement to the Subscriptions for the Bells; so as the Deficiencies of these might be made up by the help of the other.

And this very thing was then pretended, when this unworthy Design was in agitation, and ready to be put in execution. This **Aram** is now dead; nevertheless, there is a competent Witness, a person of good Credit yet remaining alive, who saw the Paper of Instructions that was given by the *Mayor*, and was present when it was delivered to the Bishop, and heard the Bishops Expostulation with the *Mayor* about the same.

Such then was the state that the Church business was in on the City part: when *Michaelmas* comes leading to the Year *One thousand six hundred sixty and eight* (*Michaelmas* is the time for the New Elected Mayor and Sheriffs to be Sworn, and take their place) much was expected from this New Mayor, as having professed to bear a Filial respect and obedience to the Church: And truly there wanted not plenty of good promises, and some plausible overtures from him; but very little in the Church-concerns was done. Much

noise and out-cry there was about the money levied and collected; That Workmen were not paid; That some Materials belonging to the Work were not satisfied for; That what money was collected, was not distributed, as was intended. I know not how grounded they were, but some Suspicions were conceived, some whispering Rumors passed abroad, that instead of this money being disposed to a Publick use, it went into private Pockets. And if it were so, it was said, That would not have been the first instance of that kind in **Waterford**.

Hereupon the Bishop, in order to consult with the *Mayor* and *Sheriffs*, desires them to give him a meeting, that as they had undertaken the raising, receiving and disposing the money levied and collected for the Church and the Bells, so they might give an account what was become of it, and how disposed of: For, know, that the charge of Casting the Bells, and providing Clappers, Ropes, and all other things requisite about them, as they came from *Bristol*, amounted but to One hundred and sixteen pound one shilling and six pence; a Sum much less than what the Rate and Subscriptions made: But about this time,

while

while these things were thus discussing, the said Mayor told a Person of good Quality, That as for giving an Account to the Bishop, he would be content to do it, in case he were desired thereto in a friendly manner; but otherwise he would not, because as he was Mayor, so he was not subject to the Bishops Jurisdiction.

Well, notwithstanding that he was thus (as he termed it, and it was so indeed) in a friendly manner desired again thus to do; yet neither he, nor the two Sheriffs did give the Bishop a meeting as was desired of them; whereupon the Bishop orders a Process to issue out, and Convents them before him in the Consistory; They refuse to appear, though being duly Summoned, and so run into Contempt. Being called again, and then appearing, they were for their former Contempt enjoined an easie Penance; They aggravate their former, with this new Contempt in disobeying the Bishops Injunction, and thereupon are mildly Censured by the Bishop; Not Excommunicated, as was falsely rumord and mouth'd abroad by Men that regarded not what proceeded from them, whether

whether Truth or Falshood, so it might but serve their purposes; but large intermissions of time there were betwixt every of these Proceedings, as will be shewed hereafter: And thus stands **the matter of Fact** in this whole Transaction.

Upon a Reflection now made on this whole matter in one Review, Will not the **Carriage** of these persons appear of a strange form and kind, to any sober and indifferent Man? Hardly, I think, will it be parallel'd by President of any such that has formerly been; Hardly be entertained with Credit, that any such had lately been. And the whole Proceeding being so as is here briefly declared, Let the **Persons concerned herein**, be so ingenuous, as freely to confess and acknowledge the same. If yet this be denied (so may the truest Narrative of things be, and yet have never the less of Truth in it for all that) yet there is so much, and so clear Evidence to Verifie what has been set down, That if any Attempt be made of standing to such a Denial, then an easie producing of this Evidence, will both shame those Deniers, and add to the Confirmation of the Truth

Truth hereof. Howbeit, some particularities in several passages of this Proceeding, may find in the following Sections a more seasonable Discovery and Enlargement. In the mean time, the Question *de Jure*, falls in to be discussed, concerning the justifiableness of the Bishops proceedings herein.

Three main Exceptions I find much insisted upon, and urged against these Proceedings.

The first is, in relation to the Persons thus Convented and Censured; for they being the Mayor and Sheriffs of a City under His Majesties Government, and representing His Person; it is said, That thereupon they became exempt from any Episcopal Jurisdiction.

The second Exception is, in relation to the Cause they were called in question upon; for that is affirmed not to be of Ecclesiastical, but Civil cognizance, because said to be grounded on a real Contract betwixt the Corporation and the Church; and so the holding Plea, and judging of Contracts, belongs not to the Consistory, but to the Temporal Courts.

The

The third Exception is, in relation to the manner of Proceedings, which are affirmed to have been precipitous and hasty, without such form and regularity as ought to be observed therein, and therefore illegal and unjustifiable.

To these three Exceptions, I shall oppose and endeavour to make good these three following Propositions, which will both invalidate any force that might be in the Exceptions, and likewise assert and make good the Legality of what was done therein.

I. Prop. The Bishops Jurisdiction in the Case before mentioned, was Legally founded in respect of the Persons proceeded against.

II. Prop. The Bishops Jurisdiction over these persons, was Legally founded, in respect of the Cause proceeded upon.

III. Prop. The Bishops Jurisdiction was Legally managed in this Cause against these Persons, in respect of the manner observed in the proceedings thereof.

I. Prop.

I. *Prop.* The first Proposition, The Bishops Jurisdiction in the case before mentioned (was legally founded in respect of the Persons proceeded against) To make this good, is that, which I am first obliged to endeavour. And I do it thus, by laying my foundation in this received Maxime concerning Spiritual jurisdictions; That in all matters and causes of Ecclesiastical cognizances, all Persons within any Diocess regularly and *de jure communi*, are subject to the jurisdiction of the Bishop of that Diocess: The original proceeding of which institution (I mean as to the actual Exercise of such jurisdiction) depends upon, and derives principally from the bounty and munificence of Christian Emperors and Princes. As for jurisdiction meely spiritual convey'd in, and at the time of Consecration, inhærent in every Bishop, as he is such, I here speak not of, otherwise than as it is the foundation and ground from which this Actual exercise does arise, and has the enlargements made to it, both subjectively in respect of persons made subordinate thereto; and objective'y in respect of matters and causes appropriated to it.

Sundry instances making this Assertion good, might be had in the Imperial Law: But so it will appear to be, to him that will but consult, *Titulum de Episcopali judicio in Codice Theodosiano, Et Titulum de Episcopali Audientia in Codice Justinaneo. Et leg. omni innovatione cessante. leg. Privilegia ibidem de Sacro, Sanctis Ecclesiis*: whence *Tholosanus Syntagmat. lib. 47. de divisione judicii num. 12. 13.* Infeers this rule, *Prelati sunt ordinarii Judices Rerum & Personarum sue jurisdictionis*: And moreover adds this, *Cæsares tuerentur & defendunt sacerdotale judici-*

um, & Privilegia ejus legibus stabiliunt: And *Gothofred* on the former of these Laws, infers this as a standing rule, *Innovatum contra Canones non subsistit*. By the ancient Canons Bishops were invested with this judiciary power: Christian Emperours favourably confirm the same, and any innovation thereupon is of no force. The same power of jurisdiction in Bishops is allowed of and made good by *Charles the Great In Capitular*. lib. 6. cap. 28.

Paulus Fiacensis in his Book called *Praxis Episcopalis* cap. 4. Articuli. 8. N. S. Lays down this Rule, *Episcopus in sua diœcesi, habet intentionem fundatam super omnes de diœcesi*: And to confirm the said rule so laid down by him, he produces there the Authority of many places in the body of the Canon Law. Indeed where the matter is not of Ecclesiastical cognizance, It is the incompetency of the matter or cause, not the quality, or place, or office of any person, that exempts him from that jurisdiction; for as the forementioned Author observes, *Num. 2 Ibidem Episcopus alium Episcopum morantem in sua diœcesi, ratione delicti ibidem commissi judicare & punire potest*. If a Bishop have jurisdiction over another Bishop within his own Diocess, where the Fact is of Ecclesiastical cognizance; there is certainly the like, if not a more forcible reason, that the Bishops power should reach to all others of his Diocess.

And *Javolenus* has delivered this Rational and elegant Rule, *Cui jurisdictio Data est, ea quoque concessa esse videntur sine quibus jurisdictio Explicari non potest* L. 2. *de jurisdictione omnium judicum*. The granting, of a jurisdiction, implyes a grant of all those things that conduce to a right discharge and

and exercise of it : A power is included herein of presiding over and calling all parties under that jurisdiction to answer in judgement, of using Coercive means to such as are refractory and contumacious, and bringing matters to a final and full Execution. *Gothofred* sayes well hereupon: *Quoties casus omisus virtute & ^{Extr.} expressi comprehendendi potest, toties ad illum fieri debet extensio.*

But least this position may less pleasingly relish with some palates, because of the Authority I have hitherto made use of to establish it by : The Imperial or Civil Law being not allowed in these Kingdoms, save only in some particular Courts and causes, which is to be said of the Canon Law likewise : And in respect of the latter of these two, some men are apt to look askint upon any thing that is drawn out of it, or grounded thereon ; They are ready to cry out upon such a thing, as a Popish encroachment, tending to Advance the Miter and Keyes above the Crown and Scepter*. To prevent this, or any the like imputation, my next, and that my principal endeavour, is to shew its accordance with the State, Constitution, and Lawes of these Kingdoms of *England* and *Ireland* under His Majesties Government ; that is, with the Ecclesiastical, and with the Municipal Lawes thereof, and with the Kings Prerogative Royal. In respect of all which, I do not doubt to affirm, That this position *viz.* [That all persons whatsoever within any Diocess regularly, and *de jure communi*, are subject to the jurisdiction of the Bishop of that Diocess in matters and causes of Ecclesiastical cognizance.] That this position, I say, is agreeable to the Ecclesiastical Lawes of these Kingdoms ; Not repugnant to the Municipal Lawes

* Yet these make up a part of the Kings Ecclesiastical Lawes being so qualified as by Statute is required in 25 Hen. 8. cap. 19.

thereof; Neither is it, *thirdly*, any thing intrenching upon, or infringing His Majesties Pre-rogative Royal; These all require distinct and particular considerations.

1. It is agreeable to the Ecclesiastical Lawes of these Kingdoms, in His late Majesties Proclamation of Royal Assent given to the Book of Canons and Constitutions Ecclesiastical of this Church of *Ireland*, Anno 1634. I observe two things relating to our present purpose, the former is a strict injunction upon all persons whatsoever to observe and obey them. *We do not only by our said Prerogative Royal and Supream Authority in causes Ecclesiastical, ratifie, confirm and establish by these our Letters Patents the said Canons, Orders, Ordinances and Constitutions, and all and every thing therein contained, as is aforesaid; but do likewise propound, publish and streightly enjoin and command by our said Authority, and by these our Letters Patents, the same to be diligently observed, executed and equally kept, by all our loving Subjects of this our Kingdom, in all points wherein they do or may concern every or any of them, according to this our Will and pleasure hereby signified and expressed.*

The other thing I observe therein, is that impartial Execution of them (which is required to be made, and by whom to be made) upon all persons whatsoever that refuse to obey them: so it afterwards follows Streightly charging and commanding all Arch-Bishops, and all others that exercise any Ecclesiastical jurisdiction within this Realm, to see and procure, that the same Canons, Constitutions, Orders and Ordinances, be in all points duly observed. Not sparing to execute the penalties in them severally mentioned upon (Any) that shall wittingly or willingly break or neglect

let to observe the same : as they tender the Honour of God, the peace of the Church, tranquillity of the Kingdom, and their duties and service unto Us their King and Sovereign. All are commanded to obey these, none have an Immunity from being punished if they do not obey them.

In the last Canon of that Book, It is decreed, That if (*Any*) within this Nation shall despise and condemn the Constitutions thereof (Ratified and confirmed by Regal power) or affirm that none shall be subject to them, but such as were present and gave their voyces to them, He shall be Excommunicated, and not restored, until he shall publicly revoke his Error. In the 140 Canon of the Church of England, published *Anno* 1603. It is more particularly and expressly set down and declared, that all *manner of Persons, both of Clergie and Laity, are to be subject to the Decrees mentioned in them in causes Ecclesiastical: Although they were not themselves particularly assembled in the same Sacred Synod.*

Let us now put both these things observed, together, and the result is this : Here is a jurisdiction declared in respect of certain matters and causes, and in respect of Persons indefinitely set down over all : And in whom is this jurisdiction declared to be ? namely, in Arch-bishops, Bishops, &c. over whom is it declared to be ? over all surely. The injunction of inflicting penalties in case of disobedience is as universal and extensive subjectively, as is the command of obedience : Here is no distinction nor exemption made of any Persons, under any qualification, or Vested with any office, or subordinate civil power, so as they should be thereby privileged from Ecclesiastical jurisdiction in matters
ap.

appertaining thereunto. And *Ubi lex non distinguit, ibi nec nos distinguere debemus*, where the Law makes none, neither may we make any distinction.

I have made my first instance in these Canons as part of the Kings Ecclesiastical Lawes : But I am not to learn, that when the Authority of our Canons is urged, and that obedience which is required to them, is called for, There are a generation of such as are wise in their own conceits, men of mighty deep understandings, who think they pierce further into things, and understand more than their poor shallow Brethren are able to do : And these will question the Validity of these Canons, and their legal obligingness on the Kings Majesties Subjects. To all such therefore I shall fairly offer a few considerations, and then leave in to their own sober thoughts to determine, what Coherence there can be betwixt a disowning, or caviling the Authority of our Ecclesiastical Canons, and the profession of being dutiful and obedient Subjects.

I Many learned men, both of the Municipal and Civil Law, joyn in this opinion, and affirm, That the Kings Majesty may by virtue of His Supream Authority in matters Ecclesiastical, confirm and ratifie into the force of Law Canons made in Convocations, and that they be a part of the Kings Ecclesiastical Lawes. *Princeps tanquam supremus post Deum gubernator potest in causis Ecclesiasticis statuere quicquid verbo divino, statutis & consuetudinibus Regni sui non repugnaverit* Colen. *de Politia Ecclesiastic. Anglicana* Tab. 1. A. And then he specifies the matter of his former Assertion thus, *via*. That this supream power of our King, is in *Condendis novis legibus, five canonibus, in iisdem administrandis & relax.*

laxandis circa statum Ecclesiasticum; and this done, cum Regius assensus fuerit adhibitus, in qua Synodus decernenda Censuerit ibidem Tab. 2. In Synod Nationali vel provinciali Regis rescripto convocato, nihil tractari aut determinari potest, nisi eo assensiente, nec quicquam vim legis obtinet, priusquam Regalis assensus adhibitus fuerit. Dr. Zouch. *Rescript. Juris Eccles.* p. 1. Sect. 2. See also to the same purpose, Dr. Duck de *authoritate Juris civilis in Anglia* lib. 2. cap. 8. p. 3. Sect. 27. And the Lord chief Justice Cook 4. f. *Instit.* cap. 74. cited thereby him.

2 The King himself in the Proclamation before mentioned, declares that such Canons, Constitutions, &c. agreed upon by the Archbishops, Bishops, and Clergie of *Ireland*, to the end and purpose by him limited and prescribed unto them, *He has given His Royal assent, according to the form of a certain statute or Act of Parliament made in that behalf; And by his Prerogative Royal, and Supream Authority in matters Ecclesiastical, he has ratified and confirmed the said Canons being one hundred in number, by his Letters Patents under his great Seal of Ireland; And* then follows His Majesties strict injunction upon all His loving Subjects of this Kingdom to obey and execute the same, which I insisted upon before.

3. Besides His Majesties Prerogative Royal and Supream Authority in causes Ecclesiastical, the King is likewise by Act of Parliament vested with power for this purpose, and that is the Statute 25 Hen. 8. cap. 19. called the Petition and Submission of the Clergie to the King; For the Bishops and Clergie in Convocation having each one severally promised in *verbo sacerdotis*, never henceforth to presume to attempt, alledge, claim, or put in use, or enact, promulge or execute any new Canons, Constitutions...

tutions or Ordinances without the Kings most Royal assent had and obtained thereunto; upon which promise and submission it was enacted by Authority of Parliament; That all Convocations in time to come should always be assembled, by the Authority of the Kings Writ. And that the Kings license and authority being had, they might make, promulge and Execute such Canons, Constitutions and Ordinances Provincial and Synodal, which being ratified, confirmed and approved under H^s Majesties Great Seal, they then become of legal force upon the Subject. This Proviso indeed follows, That no Canon nor Ordinance shall be made or put in Execution by the Authority of the Convocation of the Clergie, which shall be contrariant, or repugnant to the Kings Prerogative Royal, or the Customs and Statutes of this Realm &c. *Rastals* collection word (*Rome*) numb. 1.* The like Statute to this particular we have enacted in *Ireland*, Entituled, *An Act against the Authority of the Bishop of Rome in vicissimo Octavo Hen. 8.* and referred to in the Proclamation before spoken of in the second consideration.

* Which Statute is but declaratory of the Common Law, says my Lord Coke, 4. *Instit. cap. 74. p. 323.* So that the same is grounded both on Statute and Common Law.

A Great Lawyer one Mr. J. M. (in a speech before a Committee of the Lords, at the Parliament held Anno 1641.) Having occasion to speak of this Statute (for his speech was against the Canons made the year before) avouched plainly that, that clause, *The Clergie shall not make Canons without the Kings leave, implyeth not that by his leave alone, they may make them*: But certainly the most knowing men in any Science or faculty, have not the privilege of never mistaking in what they say: for to him that advisedly considers the matter and scope of

of that Statute, it will appear plainly, That the abridging the over-growing power of the Clergie assumed by them in making and enacting Canons, and pressing their authority on others: And together with this, the cutting them off from any relation to the Bishop of Rome, and making them dependants on the King alone, for the better ordering of what should be debated and determined in their Synodical meetings; were, if not the only, yet the principal aims of that Statute: Add here further, that a successive and continued practice from the time when that Statute was made to this day, delivers the best and truest sense of it.* For thus as I have set down, it was practised in the times of Edward the 6th, Queen Elizabeth 1582. King James Anno 1603. King Charles the first in this Kingdom of Ireland Anno 1634. And though I say nothing of the Canons themselves made in the year 1640. (because all authority as to them is annulled by Act of Parliament, Anno 13 Caroli Secundi) yet the Commission granted to the Convocation of that year, at the first opening of the Parliament, and of it, was according to Law; and this speaks plainly of the Kings leave and license granted and alone needful here; see more fully thereof in Dr. Heylins. life of the Archbishop of Canterbury, p. 423. 424. 425.

* *Practica est
legum optima
intellectrix.*
Baldus.

I conclude this matter with the decision of a great Casuist: He in discoursing of Ecclesiastical Laws, and the manner how they are enacted in the Church of England. *Jus condendi leges Ecclesiasticas* (saies he) *dest pater Episcopus, Presbyteros, aliaq; personas à totius Regni clero rite electas & in legitima Synodo rite congregatas. Ita tamen, ut ejus jura, fixe*

potestatis exercitium in omni Repub. Christiana ex Authoritate Supremi Magistratus Politici pendere debeat : Idq; & a parte Antea (ut loqui solemus) & a parte post vir : ut nec iis statuendi Canones Ecclesiasticos causa liceat convenire, nisi aut ipsius mandata & inssu ad id negotii convocatis : aut ejus saltem auctoritate, Venia ab eo petita & obtemperata munus : Nec Canones in quos illi sic consenserint, tali sint, aut vim aliquam habeant obligandi, quoad Supremi Magistratus assensum accedat : Cujus approbatione & publica auctoritate simulac confirmati fuerint, illico pro legibus habendi sunt & subditi obligant, Bishop Sanderfon ; de conscient. obligat. Prælect. 7. Sect. 30. Mr. Hooker Eccles. Polii. Book 8. in p. 219. 220. 221. &c. Thus much has been said touching the Canons of our Church, and their Authority, so far forth at this present, as suits with the present occasion, and what they were produced in proof of.

In several Provincial Constitutions we find it Decreed, That concerning matters belonging to Ecclesiastical cognizance, proceedings may be made against any Layman or publick Officers, as Sheriffs and others, even to the inflicting publick Censures upon them. Many of this kind will occur to the Reader that is conversant in them ; That Constitution *Eterna Sanctis de pœnis*, Enacted in a Council at Lambeth under Boniface Archbishop of Canterbury Anno 1260. In the time of King Henry the third. And that Constitution *ut invadentibus de immunitate Ecclesie*, Enacted by the same Boniface ; likewise the Constitution *contingit aliquando eodem*, And *Accidit Novitate perversa eodem*, Enacted by John Stratford Archbishop of Canterbury in the time of King Edward the third. Now if it be here said, that these

these Constitutions were made before the Statute of *Frammure* came forth, and so proceeded more peremptorily, and not with that submissive regard and dutiful obedience to the Crown, as they ought to have done. I answer, by acknowledging those Constitutions to aim indeed at the restraining of the Kings Prerogative, and of his Temporal Courts, and therefore not of any force now, or that proceedings should be guided thereby. * But this mention is made of them to shew Historically what was then practised and held usually; and moreover to evince, that where the Rights of the Crown are not thereby impaired, nor any of the Kings Temporal Courts invaded: Ecclesiastical proceedings may be made against any Person, and his being in any subordinate civil office does not exempt him therefrom. I must yield to, and acknowledge what the Statute 25 Hen. 8. cap. 19. has determined, viz. All Canons, Constitutions, Ordinances and Synodals Provincial that had been then made, are received into the body of the Ecclesiastical Laws, and are Established to be the Ecclesiastical Lawes of England, and become of good force and validity: but with this necessary proviso herein, *quatenus consuetudinibus & Statutis Regni non repugnant, nec prerogativa Regia adversantur*, Dr. Zouch de jure Ecclesiast. p. 1. Sect. 1. So the Statute it self reports of them, that they are of force and still binding, so far forth, as they be not contrariant, nor repugnant to the Laws, customs, and statutes of this Realm, nor to the Danger or Hurt of the Kings prerogative Royal.

In the *Formula* of Juridical practice for causes Ecclesiastical set forth by Francis Clerk, and which is approved in all the Consistories and other Ecclesiastical

* Sir Tho. Ridley in his View &c. leaves it without decision, whether these constitutions be annulled by the Act of Parliament viz, 25. Hen. 8. c. 19. He determines not absolutely, I say but refers it to better judgements.

astical Courts of *England* and *Ireland*. In this *Formula*, I say, There is a title, namely, the two hundred and fiftenth title of that Book, after what manner to begin and proceed in any Ecclesiastical cause (perhaps at the instance of a party) against any Community as Dean and Chapter, Master, Fellows, and Scholars of any Colledge, &c. In the body of which title, the manner of proceeding against any Mayor and Community of a City, particularly that of *London*, is described ; whence I make this Collection, That what is declared as a matter to be observed in Ecclesiastical practice, when occasion requires a proceeding against any Mayor or Community of a City : that does certainly imply, that such a Mayor and Community are subject to Ecclesiastical jurisdiction, and consequently to such penal coercions and censures (the matter so requiring it) as are properly inflicted thereby. Hitherto concerning the first particular, that this position is agreeable to the Ecclesiastical Law.

2. As this position is agreeable to the Ecclesiastical Law, so it is not repugnant to the Kings Temporal Laws, or the Municipal Laws of these Kingdoms. It is not repugnant to the Statute Law : The Statute called *Magna Charta* confirmed by King *Henry* the Third in the Ninth year of His Reign, and by so many Kings since this Statute (said to be the Ancientest written Law that is now extant, and the Breviate and Summary of all the written Laws of *England* and most beneficial to the Subject) declares in the first Chapter thereof, That the Church of *England* shall be free, and have all her Holy rights and liberties inviolable.

* In

* In the Thirty seven Chapter of the said Statute, There is a Reserve to all Archbishops, Bishops, &c. Of all their Liberties and Priviledges: one branch of which Liberties and Priviledges and Rights, is this power of jurisdiction over all persons in their respective Diocesses.

Edward the first, the Son and Successor of this King, ordained the Statute called *circumspecte Agatis* in the thirteenth year of His Reign. It has been affirmed concerning this Law, that it was a prelati- cal Constitution, because inserted in the Provincial Constitutions in the title *de foro competenti*: or at the most, one onely of the Kings Writs issuing out on some occasion leading thereunto. But to confirm the Authority hereof, My Lord chief Justice Coke determines of it after this manner; though some have said this was no Statute, but made by the Prelates themselves: Yet that it is an Act of Parliament, is not only proved by our Books, but also by an Act of Parliament. *Instit. p. 2. p. 487.* In this Statute then (set down as a boundary, betwixt the Spiritual and Temporal jurisdiction) full power and authority is given or confirmed rather to the exercise of jurisdiction Ecclesiastical, over all persons indistinctly, in such cases as belong to and are mentioned in it.

In the Ninth year of His son and Successor King Edward the second, came forth the statute called *Articuli cleri*, by the form and purport of which, it appeareth, that for any matter Ecclesiastical, indefinite Men may be cited; and if cited, then subject to all judicial consequences therein. In the Twelfth Chapter of this statute, The question is put, Whether the Kings Tenants be subject to the Eccle-

* *Et habeant omnia jura sua integra*) that is, all Ecclesiastical persons shall enjoy all their lawful jurisdictions, and other rights without any diminution or subtraction whatsoever. D. Coke on *Magna Charta. cap. 1.*

Jura sua) says the same Author *ibidem*, prove plainly, that no new rights were given to them, but such as they had before hereby are confirmed, so that it follows, that what simplicity and fullness of jurisdiction they had before, is hereby confirmed.

* The cloſe of which Statute is after this manner. Rati-
fying, confirming and ap-
proving all and every of
the Articles aforeſaid, with
all and every of the Anſwers
made and contained in the
ſame, do grant and command
them to be kept firmly
and obſerved for ever, wil-
ling and granting for us and
our Heirs, that the aforeſaid
Prelates and Clergie, and
their Succeſſors, ſhall uſe,
execute and praſtiſe for e-
ver the jurif-
diction of the
Church in the
Premiſes after
the Tenor of
the Anſwers
aforeſaid, with-
out quarrel, in-
quieting or
vexation of
our Heirs, or
any of our
Officers whatſo-
ever they be.
*Poult. Colleſt
of Statutes p
101. in fine cap.
15.*

Eccleſiaſtical jurifdiction, as others are ; and if they
may be Excommunicated for their manifeſt contu-
macie, and after forty dayes continuing ſo, whe-
ther they may be ſignified and attached by the
Kings Writ ? The anſwer given to the queſtion is
ſuch : It was never yet denied, nor ſhall be hereaf-
ter. * It ſeems the Kings Tenants ſuppoſed them-
ſelves ſuch ſpecially priviledged perſons, as to be
thereby exempted from ſpiritual jurifdiction ; but
that would not ſerve their turns, And ſo *a pari*,
what would not be ſufficient for them, will not be
ſufficient for others though in office under the
King.

During the long Reign of Fifty years of King
Edward the Third, the great Charter was ſeveral
times confirmed. The liberties, priviledges, and
franchiſes of the Clergie were new ratified in the
fourteenth and five and twentieth years of His
Reign. And ſo in the firſt, ſixth and eighth and
twelfth years of *Richard* the ſecond. In the firſt
ſecond and fourth years of *Henry* the fourth, It
was enacted, That the Lords Spiritual as well as
Temporal, ſhould have and enjoy all their Rights
and Liberties.

I grant indeed that in the Reign of two of theſe
preceding Kings, *viz.* *Edward* the third, and *Rich-
ard* the ſecond, that the two ſtatutes of Proviſo's
and Præmunire were made : But he that ſhall duly
obſerve the end wherefore, and the matter wherein,
and the perſons againſt whom theſe ſtatutes were
made, will not be able to find that any abridgment,
but rather a firmer ſettlement of Epifcopal jurif-
diction, in the right Conſtitution of it, was intend-
ed and came thereby : That which was mainly
aimed

aimed at, and provided against in these statutes, was, to repress the encroachments of the Pope of *Rome*, even upon the Bishops legal jurisdiction it self. The Pope by His Emisaries in *England*, from time to time drained the Kingdom of its Wealth; He invaded the Kings Sovereign Rights, by Mandates *De providendo*, and expectative Graces, granted of Ecclesiastical livings before the Incumbents were dead: And besides, He boldly intrenched on the Kings Temporal Courts, many such unreasonable greivances there were; which both King and People felt the load of, and which to make them the heavier, were fetch as far as *Rome*, to be put upon them.

But all this while, here are no exemptions to any particular persons, or civil Officers to free them from Ecclesiastical jurisdiction, where it proceeded in due manner, and was exercised in matters properly cognizable by it; That which must have the note of remark put upon it, is this: Provision is here made under severe penalties against acting by a derived power from, and in an Usurped jurisdiction under the See of *Rome*; This no English Bishop might do then; This no Bishop in *England* or *Ireland*, might, or does, or may do now.

One Act of Parliament will best serve to give light to another. Now the statute 25 *Hen.8. cap. 21*; affirms expressly, that the statute of provision and *præmunire* of the 16th *Richard secundus*, was made against such as sue to the Court of *Rome* against the Kings Crown and Dignity: so that Episcopal jurisdiction in each respective Diocess, and in matters of Ecclesiastical cognizance, is so far from being impaired

paired by these statutes, that in truth it is more firmly fixed and corroborated thereby.

All these things were before the Reformation in *England*, towards the dawning of which, we meet with a noted statute in the 23th year of King *Henry 8. cap. 9.* designed, as is conceived, to restrain the Exorbitances used in summoning people out of the Diocess wherein they inhabit without leave of their Ordinaries: which thing, as it tended to the great vexation of the persons so cited; it also aimed at the very encroaching on the several Ordinaries Rights, on pretence of some legantine power, or *Nuncio's* Court or other extraordinary cause. In the preamble of which Statute, it is affirmed, That all persons of any quality or condition may be cited before their Ordinaries: (so it be in proper cause and due Order) The body of that statute provideth, that no citation be made out of the Diocess where the party dwelleth, but where some spiritual offence or cause is committed or done. *So that a contrario sensu (says the learned and judicious Dr. Cosen Apol. p. 67.) in any offence or cause spiritual, any Subject may be cited within his or her Diocess: And in some peculiar causes there mentioned, and recited, they may be cited out of their Diocess.* Now the power of citing, presupposes a full jurisdiction: that is, a power to proceed further thereupon in all due requisits and forms that belong to any cause, whether it be upon instance, or of matter of correction.

Since the Reformation that all jurisdiction Ecclesiastical is *de facto*, as it was alwayes *de jure* united to, and so derived from the Imperial Crown of *England*; there is by the statute of the first of Queen

Queen Elizabeth, cap. 1. Full power and authority given to the Ecclesiastical Judges for the Executing of Ecclesiastical jurisdiction as before time. See also a statute made in Ireland, in the 28. year of King Henry the 8. called an Act against the Authority of the Bishop of Rome : towards the latter end thereof—*Provided, that notwithstanding this Act, or any other Act made for the taking away of the said Bishop of Romes Usurped power, Authority, Prebeminence, Jurisdiction or any other thing or things in the same comprised; That all and every Archbishop, Bishop, Arch-Deacon, Commissary and Official, and every of them, shall, and may use and exercise in the name of the King only,*^a *all such Canons, Constitutions, Ordinances and Synodals provincial, being already* *Vid. infra p. 53.* *made, for the direction and order of Spiritual and Ecclesiastical causes, which be not contrariant nor repugnant to the Kings Lawes, statutes and customs of this Land, nor to the Damage and Hurt of the Kings Prerogative Royal, in such manner and form, as they were used and Executed before the making of this Act: till such time as the Kings Highness shall order and determine according to his Lawes of England, and such order and determination, as shall be requisite for the same, and the same to be certified hither, under the Kings Great Seal, or otherwise ordered by Parliament.*

And while I am thus enumerating the several statutes which the former position is not contrariant to, but rather strengthened by, I must not omit the making mention of those statutes and Acts of Parliament that are set out and published, meerly upon Ecclesiastical causes and matters (which are reckoned by some, as those that enter into, and

make up the body of the Kings Ecclesiastical Lawz, *Zouch de jure Eccles.* p. 1. *Sec.* 1. & c.) whether these be matters of a civil or criminal Nature: matters of civil cognizance are either such as concern Pre-contracts and other matrimonial causes. In *Ireland*, 33 *Hen.* 8. *cap.* 6. In *England*, 32 *Hen.* 8. c. 38. 1 and 2 *Edward* 6. c. 23. 1 *Elizab.* 1. or such as concern Testamentary matters, 21 *Hen.* 8. *cap.* 5. In this Kingdom, 28 *Hen.* 8. *cap.* 18. All matters of Tythes, and the pursuits and impleadings there-upon: Here, 33 *Hen.* 8. c. 12. In *England* to the two Statutes mentioned before, called *circumspexisse Agatis*, and *Articuli Clerici*. These may be added, viz. 1 *Richard* 2. c. 14. 27. and 28 *Hen.* 8. c. 20. 32 *Hen.* 8. c. 7. 2 *Edward* 6. *cap.* 13. Concerning all which, all persons, without distinction of place or office, who are concerned in any of these causes, they are subject to Episcopal jurisdiction, to which the same causes do appertain, and by which they are managed. And for matters which are criminal: To be by other statutes, I instance in these two only. The one *De Excommunicato capiendo*, in 5 *Elizab.* c. 23. where the several crimes therein mentioned, subject all such as shall be detected and found guilty of any of them to the Ecclesiastical Tribunal: The other is the statute for Uniformity of Common-Prayer, &c. 1 *Elizab.* *cap.* 2.

In this statute, after a charge given in this Solemn and strict manner—*The Queens most Excellent Majesty, The Lords Temporal, and all the Commons in this present Parliament assembled, do in Gods Name earnestly require and charge all the Archbishops and Bishops, to endeavor their utmost for the due execution thereof: And then it follows for their power and authority in this*

this behalf— Be it further Enacted by the Authority aforesaid, That all and singular the said Archbishops, Bishops, &c. and all other their officers, exercising Ecclesiastical jurisdiction, as well in places exempt, as not exempt, within their Dioceses, shall have full power and authority by this Act, to reform, correct and punish by censures of the Church, all and singular Persons, which shall offend within any of their Jurisdictions or Dioceses after the said Feast of St. John the Baptist next coming, against this Act or Statute, any other Law, Statute, Priviledge, liberty or provision, heretofore made, had, or suffered to the contrary notwithstanding. See also the Statute made *secundo Elizab. cap. 2* here in Ireland. The thing we had in hand to make good was this: That all persons whatsoever within any Diocese regularly, and *de jure communi*, are subject to the Bishop of that Diocese in matters and causes of Ecclesiastical cognizance, & that this position is not repugnant to the Statute Laws of these Kingdoms: This I think has been fully evidenced, and needs no further enlarging upon.

And to give one instance of this jurisdiction and coercive power in Bishops over all indefinitely, it shall be in the matter of subtracting and detaining of Tythes, a cause properly and anciently cognizable before them. That ample Charter granted by King William the first to the Clergie, and mentioned at large by Mr. Selden in his History of Tythes, *cap. 8. p. 225*. The conclusion of which is after this manner: *Quicunq; decimam detinuerit per justitiam Episcopi & Regis (si necesse fuerit) ad redditionem arguatur*. Startle not, Reader, at the eying of this; that the Bishops power of Justicing has here precedency of place before the Kings: conceive not,

that this was to set Episcopal power on high, and make Regal Authority subordinate to it: But this declares, to whose judicial cognizance under the King, the proceeding against detainers of Tythes (of what quality and condition soever they be) does immediately appertain; & who is the Officer and Minister of Justice therein: And the Kings power being after mentioned, is so set down by way of judicial order and consequence, not of subordination in power and Authority: Thus much these very words (*si necesse fuerit*) plainly do import, as if it were said, should any of these detainers prove refractory and contumacious against the Bishops authority, so that there were a necessity of invoking the secular power, the King would then be present therewith, and by poenal coercions compel them to give obedience thereto.

Now for what concerns any other part of the Common Law, it may be also both safely and truly in respect of the thing it self affirmed, That Ecclesiastical proceedings according to the position laid down, bears no contrariety therewith, as is set down by *Dr. and Student, lib. 1 c. 6.* That Episcopal jurisdiction is of force in this Kingdom even by the Laws of this Realm, in certain particular instances mentioned, is reported by *Dr. Cosen* from a certain Author writing in *King Hen. 8th time* (*Appl. part 1. p. 7.*) The Author is shewing, that the Bishop of Rome has not, nor ought to have any jurisdiction in His Majesties Kingdoms by the Laws of this Realm: The medium whereby he proves this thing is this, because Certificates of Bishops in certain cases are allowed by the Common Law, and admitted in the Kings Courts; But the Popes Certificate

ficatē is not admitted, *vid.* Lord Coke *Instit.* 4. *cap.* 74. *circa initium.* & *de jure Regis Ecclesiastico*, p. 23. & 26. & *diversos casus ibidem citatos.* Besides, in the statute of Appeals, 24 Hen. 8. *cap.* 12. mention is made of spiritual jurisdiction exercised in causes belonging to the same, and it is there expressly said, *That such exercise is grounded on the Laws and customs of this Realm: circa initium dicti statuti.* Now certainly a statute best informs any one, what is truly, and what is agreeable to the, Common Law. The Bishops are by the Common Law the immediate Officers and Ministers of Justice to the Kings Courts in causes Ecclesiastical, Lord Coke *de jure Regis Ecclesiastico*, pag. 23.

And for what belongs to any custom or ancient usage that has the force of Law among us, I cannot find out any such that is impugned by what I have affirmed: But thus I may safely determine, That if any manner and course of things established by long use and consent of our Ancestors, and still kept on foot by daily continuance and practice, be a custom, and may set up for a Law not-written: Then certainly the thing that has been affirmed (that is, the exercise of Ecclesiastical jurisdiction by Bishops over all persons within their respective Diocesses, and in causes belonging to it) and thus far endeavoured to be proved, is not at all contrariant thereto, but of perfect agreement, yea of the same Nature with it.

Are there any that after all this will make their reply, and tell us of persons exempted from Episcopal power, and the exercise thereof bound up and restrained in respect of such, and for proof of this will alledge the Authoritative proceeding of

King *William* the Conqueror, who would not suffer any Bishop to Excommunicate any of his Barons or Officers, for *Adultery*, *Incest*, or any such Heinous crime, except by the Kings command first made acquainted therewith. By the way it must be known, that the word Baron, is not to be taken in that limited and restrictive sense, as to understand thereby the Higher Nobility, to which Votes in Parliament do belong: But generally for such who by *Tenure in chief*, or *in Capite* held land of the King, *Selden spicilegium ad Eadmerum, referente Tho. Fullerio B. 3. Histor. Eccles. p. 4.*

Whatsoever now shall be collected hence to overthrow what has been before said; is easily answered: For King *William* very well understood his own Imperial power and right over the whole body Politick (whereof the Clergie were a part.) And that by virtue thereof, the Actual Exercise of both Civil and Ecclesiastical jurisdiction did flow from him. And that he might where and when he saw cause, restrain the Execution of either, how long, or in respect of what persons he pleased, and this by special privilege and immunity granted by him to such persons: And yet that jurisdiction so restrained, be no more impeached thereby, than the ordinary settled course of the common Law, by the Exemption of one or more particular persons from being proceeded against therein. Let us seek to understand this by a very plain and familiar example every day obversant before us: His Majesty has a standing Army in *Ireland* in Pay, and under His Command: All the Officers and private Soldiers therein, for some good reasons best known to himself in His great wisdom, are exempted from any

any Civil, or criminal Impleadments before the Ecclesiastical or Temporal Tribunals, without leave first had and obtained from His Royal self, or His Vice gerent here. Now will it not be a weak & inconsequent way of arguing, to conclude from hence, that the Judges in the Temporal Courts have not an universal jurisdiction subjectively, in respect of those over whom they are appointed, because a few are by special privilege exempted from it? It will be so too certainly, to conclude the like of the Bishops, the Kings Ecclesiastical Judges in the Ecclesiastical jurisdiction, because some certain person or persons may by peculiar dispensation be taken out of the same: let the utmost be urged that can be fetcht out of this present instance from *William* the Conqueror, yet we shall find enough to still and quiet that (and in the same kind too.) remember we but the 12th chapter of the statute called *Articuli Cleri*, a tale before mentioned: By that it will be apparent, That King *William* even in this particular, did not so narrowly bound Episcopal jurisdiction, as King *Edward* the second did let it loose, extend and enlarge it. The one exempted his servants and Tenants from the Ecclesiastical jurisdiction: The other almost three hundred years after, and by a statute Law, gave both up, and fully submitted them to it.

With out more adoe: The question is not whether the King as Supream Governour over all persons, in all Ecclesiastical things and causes, may exempt any of his Retainers, or any subordinate Officers in places of Civil power under Him, from being impleaded or proceed-d against in Ecclesiastical Courts: But the question is, whether he has Actually

ally done it or no, or if done it, whether to persons so qualified as our case proceeds upon. The former I do not, I must not, I dare not deny: For the Regal power and Supremacy reaches as far in granting priviledges and immunities to any (who are thought worthy of the same) in respect of Ecclesiastical matters and tryals, as it does in respect of civil matters and tryals. What he may do in the one, he may do in the other. Thus I read, That the King by His Prerogative may give protection to such persons as are His debtors, so as not to be sued by their Creditors till Himself be satisfied, *Fitz. Nat. br. fol. 28. B.* Instances more might be given of this kind. So he may likewise exempt from the Ecclesiastical jurisdiction: But that His Majestie has Actually done this to persons so qualified as our case proceeds upon, and *quatenus*, as they are so qualified; is that thing the contrary to which I have hitherto engaged my self to make clear, and have yet something remaining to add thereto: For the present instance from *William* the Conqueror; It was no restraining of Episcopal jurisdiction, but in such a particular matter reserving to himself the power of appointing the exercise of it: or if it yet will be looked upon as a restraint put thereon, yet it must be withall considered, that he did not so much limit and restrain in this case, as he was pleased to give greater scope to it in a matter of far greater importance, as shall be shewed by and by.

Mean while I sum up this point thus; That the Established course of Ecclesiastical proceedings, is not repugnant to the Municipal Laws of this Kingdom; that by the gracious indulgence & concessions of our Pious Princes, *aliberty* and *power* is granted by

by them to the Bishops to *exercise actually* Ecclesiastical jurisdiction upon the *Subjects* of the *Crown*: That they may be summoned: That refractory and contumacious persons may by coercive power be reduced to good order: That compulsories may be issued forth and censures inflicted, where just occasion requires, and all due requisits have preceded: They may hear and determine in causes of instance between party and party, and also proceed against any criminals (under Ecclesiastical cognizance) of what quality and condition soever they be, for correction, and reformation of manners.

3. This Position, That all persons within any Diocess regularly, and *de jure communi*, are subject to the jurisdiction of the Bishop of that Diocess in all matters and causes of Ecclesiastical cognizance, is not any way intrenching upon, or infringing His Majesty's Prerogative Royal. The Kings Prerogative is called by Sir Henry Spelman, *Glossar. ibid. Lex Regie dignitatis*: by the Civilians, *Jus Imperii*: by the later Feudists, *jus Regalium*: And the import of all these, is comprised in this description given thereof. The Kings Prerogative is that special power, preheminance, or priviledge that the King hath in any kind over and above other persons, and above the ordinary course of the Common Law. *Cowell ibidem*. A branch of this is the Kings Legislative power in Ecclesiastical matters and causes, with the advice and consent of such as are appointed thereto. And by the Statute of King Edward the second, in the Seventeenth year of His Reign, called *Prærogativa Regis*, it is said, *That whatsoever Gracious concessions the King is pleased to make unto the Honour of Gods Church and good of the Common wealth,*

wealth, and for the remedy of such as be grieved; He would not that at any time they should turn in prejudice of Himself, or of His Crown; but that such Rights as appertain to Him, should be saved in all points: Rastal's Collection *ibidem*. Now the Actual Exercise of Jurisdiction Ecclesiastical, being that which by Special Favour of our Kings is granted to the Bishops after a very large and ample manner; if any thing therefore in that Grant, should tend to the diminution of the Rights of the Crown, yet by the Statute before mentioned, there is still a *salvo* to them in all respects whatsoever; so that in regard of His Majesties Prerogative Royal, in this particular branch of it, as well as in all the rest, the Position before set down, does not, nay, cannot indeed infringe the same.

I touched a little before the derivation of Ecclesiastical Jurisdiction as to the executive part of it from the Crown: As every Bishop at the time of his Consecration, does by Solemn Oath recognize the Kings Majesty to be the onely Supreme Governor in this Realm, in all Spiritual and Ecclesiastical things and causes, as Temporal; and by receiving from the King a Patent of Restitution of His Temporalities, is thereby invested with Actual Jurisdiction (that is, a power to exercise and execute such Jurisdiction, *in foro externo & contentioso*, in such causes as belong thereto) so in the exercise and proceedings made in the same, he depends upon the King, from whom he derives his authority and right to exercise. In all Appeals made to the King in His Chancery, He defers to him, as *habenti Supremam auctoritatem Ecclesiasticam*, being the chief and Supreme Ordinary; and, acquiesces in his final and ultimate decisions.

A little before, I mentioned a Grant of King William the Conqueror, wherein great scope was given to Episcopal Jurisdiction; it is now proper to set down what that was, and this Historical account we may take thereof: By this King, an entire Jurisdiction was assigned to the Bishops by themselves, wherein they should have cognizance of all matters and causes relating to Religion. It seems, by the Ancient Saxon Law, the Bishops and Sheriffs jointly kept their Courts together at certain set times of the year; in the Conquerors time, these two Jurisdictions thus concurring, were parted asunder: *Fullers Church History of Britain*, Book 3. p. 5. from *Eadmer*, who lived in the time of King Henry the first, gives some account hereof*: But I shall set down the same, in the words of a late, and a learned Writer, proper to the occasion he was upon,

Conquestor porro Forum Ecclesiasticum a Laico distinxit: Nam cum antea sub Anglo-Saxonibus singulis mensibus Aldermannus seu Praeses, una cum Episcopo jus dixissent in Curia Centenaria, quam Hundredum dicimus, mandavit Episcopis & Archidiaconis, ne deinceps jus dicant in Curia Centenaria sed in loco per Episcopum designanda, ibique judicent secundum Canones & Leges Episcopales, & contumaces contra eorum mandata Excommunicationis sententia, & Brachio Regio parere cogantur, cum Praecepto Vicecomitibus & Praepositis Regis dato, ne aliquem in jus vocent coram se de iis quae ad Forum Episcopalem spectant. Dr. Duck, de *Authoritate Juris Civilis* in Regno Angliae, lib. 2. cap. 8. p. 2. sect. 26. And in the margin of his Book, alledges * *Coke's Instit.* p. 4. cap. 54. & lib. 2. cap. 6. sect. 135. Char. 2. Rich. 2. m. 1.

* *Spelman in Glossar. v. Hundredum.*

* *Apud quem.* See this Charter more amply and fully declared; the same being granted and directed to Rhemigius, the first Bishop of Lincoln, ib.

By this it appears, how early the exercise of Ecclesiastical Jurisdiction by Bishops was on foot in the Kingdom of England, and that as it derived it self from the Crown; for besides this distinct constituting of an Ecclesiastical Court from the Court of the Tourn, even before the separation, before spoken of, was made; yet the Bishops had then the judicial cognizance of Ecclesiastical causes and matters peculiarly reserved to them, so it is plainly colligible from the Laws of King Edgar, among which this was one; *Celeberimus autem ex omni Satrapia conventus bis quotannis Agitur: cui quidem illius Dioceſeos Episcopus & Aldermannus interfunt* quorum alter jura divina, alter jura humana populum edoceto: Lord Coke on the Statute of Circumspecte Agatis v. Curia Christianitatis. I might yet trace Antiquity higher in this point, but my reading is too slender, and my opportunities too mean, that I should think my self able to give a punctual and exact Account thereof; Take notice only in brief, what the Pen of a learned Writer has set down—The British, Saxon, and Danish Kings, did usually with their Clergy, or great Council, make Ecclesiastical Laws, and regulate the external Discipline of the Church within their Dominions: Among the Laws of King Edward the Confessor, these were two of them; one, that makes it the office of a King to govern the Church as the Vicar of God; another, supposes a paramount power in the King over the Ecclesiastical Courts, because they were to take cognizance of wrong done in Ecclesiastical Courts: Archbishop Bramhall's Vindication of the Church of England, &c. p. 67. King Edward the Confessor was indeed after the time of King Edgar before mentioned; but taking both

both together; and what was done by both, thence is shewed, that the practice of former Kings was followed by them; and that there was an Ecclesiastical Jurisdiction then and before exercised by Bishops, which exercise thereof derived from, and was regulated by these and other preceding Kings of England.

That which has been said, makes very fair for our purpose, and points out to us to take notice of these several observable things.

1. That the Exercise of Jurisdiction Ecclesiastical by Bishops, in the right constitution thereof in the Kingdom of England, had no dependance on Rome.

2. That much of the intermediate practice in this kind, degenerated from its first and right institution; and until the time of Henry the eighth, was a meer usurpation and encroachment on the English Crown.

3. That whereas 'tis said, The Bishops were to judge *secundum Canones & Leges Episcopales*, by Canons (I understand) the Canons of General and Provincial Councils abroad, especially the first four General Councils, according as was Enacted by the Emperor Justinian, *Authent. collat. 9. Novell. 131. cap. de Regulis. & cap. Sancimus igitur*: And by *Leges Episcopales*, I understand their Home-laws; I mean, the Ecclesiastical Laws made by the British, Saxon, and Danish Kings, with the Council of their Bishops; variety of which may be found, by him that will consult Sir Henry Spelman's Councils. The body of the Canon Law was not then in being; my meaning is, it was not so as such: The several particulars that the Decrees consist, and were made up of, were indeed then and long before in being; but they were not compiled together, till near fourscore years after.

after this, and that was done by Gratian the Monk, in the year (as some say, for there is much difference in the computation of this time) 1149. (Ridley's view, &c. p. 74.) And by Eugenius the

* Of Greg. 9. set forth Anno 1230.

The Decret. in sexto Anno 1297.

The Clementines of Clem.

3 set forth Anno 1337.

And not long after, were

exant the Extravagants of

John the 22d, and other

Popes.

third allowed to be read in the Schools, and to be alledged for Law: And for the Decretals, &c. Clementines and Extravagants, they came in successively along while after: Here, by the way, is seen the vanity and wildness of some mens fancies, that by all means will have Bishops Courts to be of Popish extraction; and, that both in their Election and Constitution, they receive influence and authority from the Romish Consistory: Than which, nothing is more untrue in its self, and unhistorical, as to the right deducing the primitive Institution hereof (not to speak of the Eastern Churches), even in the Kingdom of England it self.

4. This is also hence observable, That the present course commanded, and observed by the Bishops in the Exercise of this Ecclesiastical Jurisdiction, suits nearly with the ancient State thereof; and is so far from dammifying the Prerogative Royal, that it mainly asserts and vindicates the same.

It might perhaps be doubted, That different Jurisdictions in one Kingdom, and those exercised by persons of different professions, though deriving from one Supreme Head, would rather cause, than prevent many inconveniencies; and those inconveniencies so bad in their nature, as to detract from, rather than add to the Supreme Magistrates Dignity and Prerogative; as namely, by introducing confusion and disorder in the management of both,

both, and in the causes and matters to be managed in them, and occasioning continual jealousies and distastes betwixt the persons appointed to manage them, observed by my Lord Bacon's Advancement of Learning, *sphor.* 96. But, in truth, no such ill Effects do follow hereupon; for distinct Jurisdictions exercised by persons of several Orders and professions in these Kingdoms, and vested with authority from the Supreme Magistrates so to do, though juridical proceedings therein be different from the ordinary form and prescribed course of the Common Law, argues a plenitude, not a defect of power; an advancing of it, not derogating from it, in that Supreme Magistrate granting the same; his great wisdom and prudence in a determinate stating the nature and bounds of each Jurisdiction; the appropriating certain causes to be heard and determined in them respectively, commanding all His Subjects to give due obedience thereunto, in such causes as are limited to those Courts, and which any Subject may be concerned in: And as both derive from so to depend upon him, in an equal poise as to the Authority belonging to each, so that all the supposed inconveniencies are sufficiently provided against: And the ordering all these things in this manner, is an effect of the Kings high Prerogative enabling him so to do, and is both by Custom and Law among us allowed of; observe with me these following instances.

all Jurisdictions, as well Spiritual as Temporal, and it is a Right of His Crown to distribute to them, that is, to declare their bounds. *Lord Hobart's Reports. Dr. James's Case.*

The Kings Majesty is pleased to confirm a peculiar Jurisdiction granted by His Royal Progenitors, to the

* The King is the indifferent Arbitrator in C. own to distribute to them.

the two Universities of Cambridge and Oxford: The Chancellor of each University, or his Commissary, administer Justice according to the Civil Law, and the Customs and Statutes of the University, where the persons at variance together are Students, or one of them at least is such; insomuch as in personal Actions for Debt, matters of Accounts, or any Contracts made within their own Precincts, and in some criminal matters likewise, none of them may be called to *Westminster Hall*; but the cognizance thereof belongs to the Chancellor of the said University, or his Commissary, as is before said. If any Appeals be made from Sentences given in any such Trials, they are first interposed to the Regents, last of all to the Kings Majesty himself: *Cowell. Interpr. in verbo (Privilege)* Dr. Duck, *ut supra*. sect. 30. Will any man now say, That the Exercise of this power, is intrenching on the Kings Prerogative, because His great Courts at *Westminster* are not applied to, and a Jurisdiction distinct from and independent upon them is exercised? Surely no, because the Exercise of this power is granted by Royal Charter; it proceeds from, it depends upon, it is done in an acknowledgment of the Kings Supreme Power and Prerogative: A : *Disput. between King*

There is a Court of great Dignity and Honour, called the Court of the Constable and Earl Marshal of England: Herein are determined all Contracts touching Deeds of Arms out of the Realm, as Combats, Blazons of Armory, and the right of bearing Arms, &c. proper to particular Families; the manner of proceeding in this Court, is according to the form of the Civil Law *, the use and authority of which, is of great sway herein: Appeals that

* *L. Coke Jurisdiction of Courts*, *ca.* 17.

are interposed from any definitive sentence in this Court, are brought to the Kings Majesty Himself, not to His Chancellor, the municipal Law is altogether secluded from hence; Justice is administered, Delinquents are punished, without any relation to that, or the Judges thereof; yet the Kings Prerogative is not infringed by the exercise of this Jurisdiction, because it is derived from the King.

I might add here the Court of the Admiralty, the peculiar Jurisdiction exercised within the Cinque Ports by the Lord Warden thereof: In these Courts, matters both civil and criminal are tryed according to the course prescribed by the civil Law; but in the following Leafs I shall have occasion more distinctly to write something relating to these matters, and respectively to these two Courts. Now as it is in these different Jurisdictions they derive from the King, His Subjects are bound by command from Him, to obey the Authority thereof; if they refuse to obey, by penal coercions proper to each, they may be compelled to it; yet still the Royal Prerogative is not any whit diminished, nor the Rights of the Crown at all impaired hereby. As it is thus (I say) in the distinct Jurisdictions; so it is in the exercise of Episcopal Jurisdiction in the Ecclesiastical Courts.

And now I have uttered thus much, I perceive my self beginning to walk on a narrow, slippery ridge, where a steep precipice is on each side. The danger of falling on one hand, is, least I abase the Prerogative so low, as to subject the King in Ecclesiastical causes and matters under the Resolves and Decisions of Classical Assemblies*,

* *Huc Disciplina omnes
orbis principes. & Monar-
chas salces suos submittere
& parere necesse est* Trid-
ver. Disciplin. Ecclesiast.
p. 142, 143. Bishop White
in his Preface to his Treas-
ure concerning the Sab-
bath.

* And yet our Law attri-
butes much in this particu-
lar, and that very highly
to the King: Reges Sacro
oleo uncti spiritualis Juris-
dictionis sunt capaces. 33
Etw. 3. Ayle de Roy. 107.
Coke. Cawdrie's case. p.
16.

blies*, as the *Presbyterians* do; or bring
Him in subordination to the Bishop of
Rome, as the *Papists* do. The danger on
the other hand, is the over-exalting of the
Prerogative, so that it might be thought
we attribute to the King (as sometimes
the *Papists* object to us) a power to ex-
ercise Sacerdotal Offices in the Church, to
inflict censures*, &c.

Now to walk even and steady betwixt
these two dangerous downfalls, is that
which must be endeavoured; and there-
fore whereas we own, and solemnly recog-
nize the Kings Supremacy in Ecclesiastical
matters and causes, it is to be understood

according to the sense and meaning set down in the
words of the 37th Article of the Church of *England*,
and also in the Article of the Church of *Ireland*
concerning civil Magistrates. The Kings Majesty
hath the chief Government of all Estates Ecclesi-
astical and Civil within His Dominions, see Queen
Elizabeth's Injunctions set forth in the first year of
Her Reign. Now this Supremacy keeps the King
above all others within His own Kingdoms; and, it
keeps Him from a subordination either to the *Pres-
bytery* or the *Papacy*; and it is such a Supremacy as
is only Political and Archiepiscopal (as it is phrased)
that is, a power paramount over all His Subjects, to see
that each sort of such as are under His Government,
as well Ecclesiasticks, as others, do their duties in their
several and respective stations; and that all things be
acted by proper and fit Agents, for preserving both
Church and State in tranquility and safety.

Thus

Thus it appears, that nothing either belonging to Ecclesiastical Order or Jurisdiction, is exercised by our Kings in their own persons, according as is fully declared in the following parts of the said Article. Neither does this give any countenance to *Erasianism*, as some have (improperly enough) inferred from thence; herein, as has been described, is seen the Kings Supremacy: *By it, He is the Keeper of both Tables; He governs and regulates Affairs so both in Church and State, as may best conduce to the preservation of true Piety to God, and right Justice to Men.*

From this power paramount and Supremacy, does descend the Bishops power of exercising Jurisdiction; that is, exercising the same actually; I say, actually: for, as our Divines do distinguish (Archbishop Bramhall's answer to R. C. p. 160, 161. Bishop Sanderson *de conscient. obligat. prælect.* 7. sect. 29, 30. Bishop Bilson of *Subjection*, par. 3. p. 293. in *octavo*. Mr. Hooker *Eccles. Pol.* B. 8. p. 213, &c.) *There is an habitual, and there is an actual Jurisdiction; habitual Jurisdiction flows from Episcopall Order, actual Jurisdiction, is a Right and liberty granted, opportunity and means afforded of exercising and reducing that habit into act; and that, in foro externo & contentioso, after a certain and peculiar manner appointed therein. Thus the King has His Ecclesiastical Laws, and His Ecclesiastical Courts, and His Ecclesiastical Judges**; there are causes of such and such a Nature appointed by the King to be judged of by them, in those Courts, according to those Laws*: All persons within their respective Diocesses (that is, certain circuits and precincts of Jurisdiction by the King set out to each Bishop, and those in their bounds and limits, either to be con-

* See Sir Joh. Davies Reports. *Præmunire versus finem.*

* Many things the Popes formerly have taken upon them to give direc-

sions of, and Enact Canons concerning Episcopal Jurisdiction (under this *salvo*) in ordi-
ne ad Spiritu-
alia: which things are matters meerly of civil intercourse and com-
merce betwixt man and man; such are those titles in the Canon Law,

de emptione & venditione, de rerum permutatione, de transactionibus, de depositis, &c. Testamentary and Matrimonial, and Decimal matters, are amongst these likewise; but although these may better seem to have the aspect of matters Spiritual, yet that Spiritual men have any Jurisdiction therein, must not be imputed to the nature of the things themselves, nor to any superiority that they have over other men by reason of their; but this must be imputed to the Royall bounty and beneficence of pious Kings, who, for the Honor of the Church, have so ordered those Causes to be of Ecclesiastical cognizance, and that their Subjects concerned therein, should be obedient to Ecclesiastical Judges therein. Hereupon a Learned Bishop declares, That the Popes Decrees, Judgments and Executions in these Cases, if claimed from Christ as things Spiritual, and not granted by Caesar, are but open invasions of Princes Rights, calling those things Spiritual, which indeed be Civil and Temporal. Bishop Byles's Christian Subjection, page 20. (Sir Robert Wilmot, The Law of Laws.

Neither do we draw or derive any spiritual Jurisdiction from the Crown, but either liberty and power to exercise actually and lawfully upon the Subjects of the Crown that habitual Jurisdiction which we received at our Ordination; or the enlargement of our Jurisdiction objectively, by the Princes referring more causes to the cognizance of the Church, than formerly it had; or lastly, the increase of it subjectively, by their giving to Ecclesiastical Judges, an external coercive power which before they had not. To go yet one step higher, in cases that are indeed spiritual, or utterly Ecclesiastical,

cal, *such as concern the Doctrine of Faith, of Adm-
nistration of the Sacraments, or the ordering or disordi-
ning of Ecclesiastical persons, &c.* *sovereign, Princes have*
(and have only) an Archibisbopral power, to see that
Clergy men do their Duty in their proper places; have
this power not alwayes most properly exercis'd by the
advice and ministry of Ecclesiastical persons; and
sometimes necessary, as in the degradation of one the
Holy Orders by Ecclesiastical Delegates: Vindication
of the Church of England from Schism, &c.

*The Exercise of Ecclesiastical Jurisdiction By Bis-
hops thus being stated and settled in the likeness*
that it carries with the other instances before set
down, neither invades nor impairs, but much advan-
ces and amplifies the Kings Prerogative: It comes
to pass indeed by this means, that the Kings Supre-
macy is preserved firm and safe in the Ecclesiastical
Polity.

I know a great Objection is made against all this
from hence, because that in Ecclesiastical proceed-
ings, Citations, Decrees, and other instruments, is
set forth in the Bishops, but not in the Kings Name;
whence would be infer'd, That such attempts and
judiciary proceedings, made, or not in the Kings
Name, are invasive on the Royal Prerogative. In
order to the Answering of this Objection, let it be
observed, That there are two great Offices in the
Kingdom of England; the one, that of the Lord
High Admiral; the other, that of the Lord War-
den of the Ordnance Ports: These have great influ-
ence in foreign parts, upon the Sea, and within the
Lands. I before gave you some intimation of their
distinct jurisdiction and manner of judicial proceed-
ings, different from the Courts of the Common
Law:

Law : Both the jurisdictions of these two great Officers are ample and authoritative, yet both the Lord Admiral, and the Lord Warden of the Cinque Ports, do send forth Writs in their own Names, and they do it (*Gyes Dr. Comell in verbo, Court.*) as the Bishops hold their Courts by the Kings Authority (*virtute Magistratus sui*) In the High Court of the Earl Marshall the same practice is observed. In the Universities, Processes, and Writs, issue forth in the Chancellor, Vice-chancellor, or their Commissaries Name. Will any now presume to challenge any of these jurisdictions for invading the Kings Prerogative? Will any dare to say, That they pare off some rights, or pluck some flowers from the Kings Imperial Crown? I suppose not. How comes it to pass then, that the Bishops jurisdiction does? Whatsoever may be alledged in defence of the other, may be said (and it may be something more too) in justification of this : And know moreover, That proceedings in these Temporal distinct jurisdictions go much further upon the persons of men, than those of any Ecclesiastical Court does, even to the imprisoning of them, and in all of them (except that of the University) to the inflicting of capital punishments. And it deserves our further observing, what the great Lawyer Sir *Edward Coke* sayes touching this very thing. Albeit the proceedings and process in the Ecclesiastical Courts be in the Name of the Bishops, &c. It followeth not therefore, that either the Court is not the Kings, or that the Law whereby they proceed, is not the Kings Law; for taking one example for many, every Leet and View of franck pledge holden by a subject, is kept in the Lords Name, and yet it is the Kings Court, and all the

the proceedings therein are directed by the Kings Laws; and many subjects in *England* have and hold Courts of Record, and other Courts, and yet all their proceedings be according to the Kings Laws and customs of the Realm, *De jure Regis Eccles.* p. 39. The Learned Bishop *Sanderson* has convincingly demonstrated, That Citations and Decrees in the Bishops Name, no way encroacheth on the Kings Authority; and that they who urge the contrary, have this meaning, rather to do the Bishops hurt, than the King service, and that their affections (so far as by what is visible we are able to judge,) are much what alike towards both: *His Book called Episcopacy not prejudicial to Regal power*, p. 3, 4. Bishops proceedings in Ecclesiastical Courts under the Name, Stile, and Seal of the Bishop: See this largely discussed and declared to be warrantable by Law, by my Lord *Coke's comment on the Statute of Marriage*, 32 Hen. 8. p. 685, 686, 687.

But this Objection is taken up again, and urged with new force from hence; That in the First year of King *Edward the Sixth*, it was by Statute Enacted, That the Bishops should make their processes in the Kings Name, and that their Seals should be the Kings Arms. This Statute, sayes Mr. *Rastall*, was repealed 1 Maria 1. And that Statute not being re-
 voked by *Queen Elizabeth* in her Reign, all proceeded well enough without danger; But in the first Parliament of King *James*, there passed an Act for continuing and reviving divers Statutes, and for repealing of some others, 1 Jacb. c. 29. Into the body whereof a clause was cunningly conveyed, for the repealing of that Statute of the Reign of *Queen Mary*, by which King *Edward's* stood repealed: Upon this account it was,

was, that a little before our late turbulent confusions in England, this very thing was urged against the Bishops, and their proceedings, were declared to be bold usurpations; and encroachments on the Prerogative Royal, and violations of the Law.

But as it is usually, where men are prepossessed against any thing, they are apt to run into many mistakes about the business. It happened so in this very matter; Much missewas raised, much stir made hereupon by the Antiprelatical party, as if the Bishops who had given themselves out to be the most zealous assertors, were indeed become the onely dangerous impugnors of the Kings Prerogative: That now they were deprehended in the very design, and therefore must needs fall, having no plea to make for themselves; and having the mischief of their own visible and illegal actions witnessing against them. At this rate, their Adversaries vaunted, and fore-judged them; and no doubt, (as matters went long while times) the severest animadversion that could have followed hereupon, would have been made, if further proceedings therein had not been seasonably prevented by the wisdom of a pious and prudent Prince.

For the Blessed King Charles the First, having been made acquainted, what advantage these forward and busy people were designing to make hereof, to the overthrow of His Ecclesiastical Courts; and the Bishops His Judges in them. He did (as Dr. Heylin reports in the life of Archbishop Laud, p. 342.) call together in the year 1637, the two Lords Chief Justices, the Lord Chief Baron, and the rest of the Judges and Barons, and propounds to them these three following particulars to be

be certified of. 1. Whether processes may not issue out of the Ecclesiastical Courts in the Name of the Bishops. 2. Whether a Patent under the Great Seal be necessary for the keeping of Ecclesiastical Courts, and enabling Citations, Suspensions, Excommunications, and other censures of the Church. 3. Whether Citations ought to be in the Kings Name, and under His Seal of Arms: And the like for Institutions and Inductions to Benefices, and corrections of Ecclesiastical Offences: And the like for Visitations, whether an express Commission or Patent under the Great Seal of *England* were requisite?

To which three Proposals, the said Judges unanimously on the First of *July* in the fore-mentioned year concurred, and certified under their Hands: By Answering to the First thing propounded, affirmatively; and to the other two, negatively: And that the fore-mentioned Statute of *Edward the Sixth*, is not now in force: Whereupon, the King issues out His Proclamation, wherein having first taxed the libellous Books and Pamphlets, published against the Bishops; and after a recital made of these proceedings, He concludes the Proclamation thus—*That His Majesty thought good, with the advice of His Council, that a publick Declaration of these the opinions of His Reverend and Learned Judges, being agreeable to the judgement and resolution of former times, should be made known to all His Subjects, as well to vindicate the legal proceedings of His Ecclesiastical Courts, and Ministers, from the unjust and scandalous imputation of invading or intrenching on His Royal Prerogative, as to settle the minds, and stop the mouths of all unquiet spirits: That for the future, they presume not to censure His Ecclesiastical Courts, or*

Minis

Ministers, in these their just and warranted proceedings. And hereof His Majesty admonisheth all His Subjects to take warning, as they will Answer the contrary at their peril, &c. *

* Resolutions
unanimously
given by all
the Judges
and the Bar-
rons of the
Exchequer
(saith my
Lord Coke)
are for mat-
ters of Law
of Highest Au-
thority, next
unto the Court
of Parlia-
ment.
Sir Edward
Coke 2. Instit.
p. 618.

But some mens minds will not be satisfied with any thing of this nature, yet are willing to embrace what is fortified with Parliamentary Authority. Both therefore to gratifie them, and more thoroughly to confirm the matter in hand, we have also this Parliamentary Authority to offer unto them: For although by an Act of Parliament in the Seventeenth year of King Charles the First, all jurisdiction Ecclesiastical was quite abrogated and annulled, (I speak in respect of England; for here in Ireland no such Act was ever made) nevertheless at the happy Restauration of our Gracious Sovereign that now is, viz. Anno Dom. 1660. The said Act of the 17. of King Charles the First is repealed; and that was Anno decimo tertio Caroli Secundi; and in that Act of Repeal it is thus declared—That the said Act of the 17. of King Charles the First notwithstanding. All Archbishops, Bishops, and all others exercising Ecclesiastical jurisdiction, may proceed, determine, sentence, execute and exercise all manner of Ecclesiastical jurisdiction, and all censures and coercions appertaining and belonging to the same, before the making of the Act before recited, in all causes and matters belonging to Ecclesiastical jurisdiction, according to the Kings Majesties Ecclesiastical Laws, used and practised in this Realm, in as ample manner & form, as they did & might lawfully have done before the making of the said Act.

This Act is indeed attended with three Provisoos. The first is concerning the High Commission Court, which is excepted from having any revival, or force,

or authority given to it; or to the erection of any other such like Court by commission hereby. The second Proviso is concerning the Oath, called the Oath *ex Officio*, which is excepted against, and forbid to be tendred, or administred unto any in the exercising of any Spiritual jurisdiction. The third Proviso is, to limit and confine the power of Ecclesiastical Judges in all their proceedings, to what was, and by Law might be used before the year 1639. (observe the year mentioned to be 1639, which plainly includes, allows, and confirms King Charles the First His Proclamation, in the year 1637. In this clause and branch of this Statute, provision is also made against any confirmation to be given to the Canons, made Anno 1640.

These particulars onely excepted, and here provided against all Ecclesiastical Jurisdiction, as to it's extensiveness in all causes of Spiritual cognizance, & over all persons (of what quality and degree soever they be, or in what Office soever they are) in those causes, is firmly ratified and established. *Bartolus* his Rule is truly applicable here, *Exceptio firmat Regulam in non-exceptionis*.

But let all this be granted (will the Excepters say) that proceedings in Ecclesiastical Courts against private persons, either in matters of instance, or correction, are not entrenching on the Prerogative Royal; yet the case is otherwise, when such proceedings are bent upon publick Officers, as Mayors, and Sheriffs, &c. because they are vested with the Kings Authority, and nearly represent His Person: They are His Ministers and Dispensers of Justice; and by such proceedings against them, publick affairs might be hindred of their dispatch, and the

Kings business not be executed. I Answer, (there is no otherwise in this case) For, if the matter be justifiable, that is, if the cause any such proceeding is begun upon, do belong to Ecclesiastical cognizance; then the Spiritual Jurisdiction in the Bishops management reaches such publick Officers, as well as others, and that without invading, or in the least violating the Kings Prerogative: If occasions so require, Ecclesiastical censures may be inflicted on them, as well as on any other of the Kings subjects that do offend. And yet the doing of that will not be a censuring the King *in Effigie*, as some have, with very little reason, and but too much passion affirmed. Observe we what may be done, and adjudged against such publick Officers, in the Kings Temporal Courts.

A Mayor and Sheriffs may be impleaded before the Kings Temporal Judges in causes Civil. The people of *Waterford* may remember one or two instances hereof very lately; when the School-master there sued the Mayor and Sheriffs, before the Lords Justices of Assize, for detaining the Salary they had contracted to pay him. A Mayor of any City or Corporation, may be arrested, may, during the time of his Mayoralty, be sued to an Outlawry in the Kings Temporal Courts. The Kings Temporal Judges may upon contempts, convent Mayors before them; and occasion so requiring, commit them to prison. It is not long since that a case in *Waterford* was coming near this, when in one *Whaley's* cause, a Writ of Error was brought from the Court of the Kings Bench: This the Mayor refusing to obey, and complaint thereof being made to the Court, a Pursuivant was ordered to attach the Mayor, and

and bring him before the Judges, there to answer his contempt; which undoubtedly would have been done; if the Execution of that Order had not been seasonably prevented, by an *Affidavit* made to this effect; That the Mayor did not refuse to obey the said Writ of Error, but onely deferred the admitting of it, until he sat judicially in Court; the same having been before privately exhibited to him. By this means that proceeding was stopped, which else would have manifested, that the Mayor of *Watersford* is not so absolute, but is indeed under controll, and may be convented and punished by the Kings temporal Judges, without any affront done to the King *in Effigie*, or to his power and authority; which he the said Mayor in his proper station, and within his own Precinct does bear.

And that Sheriffs even while they are in the exercise of their Office, may be proceeded against in the Kings Temporal Courts, none can be ignorant of, that understands the practice of those Courts, and remembers there is such a Court as the Exchequer, or has undergone the Office of a Sheriff: A Sheriff, by the Statute of *Westminster*, I. cap. 9. *Anno tertio Edwardi primi*, for not doing his Duty, and for concealing of Felons, may be fined and imprisoned. One *Bronchard* in Queen *Elizabeths* time being Sheriff, had an Information Exhibited in the Star-chamber against him, for returning one that was not chosen a Knight of the Parliament, *Abridgement of the Reports of the Lord Dyer*, 425. A Sheriff of *Barkshire* was committed to the Fleet, and fined by the Court of *Common Pleas* for unjust taking of Fees: *Brownloes Reports*, second part, p. 283. I doubt not, but the Learned in the Municipal Laws,
are

are able to furnish out plenty of instances of this kind.

Well then, Mayors and Sheriffs may be Impleaded, may be Out-lawed, may be Arrested, may be Fined, may be Imprisoned in the Kings Temporal Courts, by, from, and before his Temporal Judges : And in all these Inflictions, here's no Fining, no Arresting, no Out-lawing, no Imprisoning, no Attaching the King *in Effigie*, nor any intrenching upon his Authority from himself to his subordinate civil Officers : Here's no hindring the dispensing of Justice, no obstructing the Kings business, nor letting the execution of His Majesties service, in the hands of these publick Officers; that is, at all dreaded hereby. And pray, How then comes it to pass, that the case is not the same, when in matters of Ecclesiastical cognizance, the Kings Ecclesiastical Judge in his Ecclesiastical Courts proceeds against such persons, by penalties proper and usually inflicted therein ? Is not the Kings Authority in His Ecclesiastical Courts in matters belonging to them, as forcible and coercive respectively to the manner of proceedings therein, as the same Regal Authority is in the temporal Courts in matters belonging to them, and respectively to the manner of proceedings therein ? The King hath both Jurisdictions united in Him (as has been largely before shewed) *Rex habet omnia*

* So it is also said, *Rex est mixta persona quia tum Ecclesiasticam tum temporalem Jurisdictionem habet.*
11 Hen. 7. 12.

jura in manu sua : It is a Maxim concerning the King, which I read cited from *Bracton, lib. 2. c. 24.* * Now all is completed in these two Jurisdictions, which although they may be diverse, yet they are not contrary in him; they are both radically and fundamentally in him, and derivatively only in all Officers and Ministers of Justice in either kind. Is the King then absolute in the one, and yet limited

in the other? less powerful in his Ecclesiastical, than in his civil Supremacy? That is, Supreme, and not Supreme: Thus to say, is either to contradict ones self, or neither better nor worse than plainly to derogate from the Kings Ecclesiastical Supremacy; and to give him the Name, but to deny the Thing: It incurs the danger of implied, if not direct disowning Regal Supremacy in all causes Ecclesiastical, and over all persons that may be concerned therein. It is plainly to make a *magis* and *minus* in that Authority, which will not admit any such thing*, it being alwayes equally and alike forcible in all; that is, chief and supreme in both Administrations, Ecclesiastical and Civil. Let's state a Case or two for better illustration sake.

* *Regia dignitas est indivisibilis.* Coke 4 Instit. c. 48.

A Suit is commenced in the Ecclesiastical Court, before the Bishop the Kings Ecclesiastical Judge presiding therein, concerning a matter (we will suppose) not properly cognizable there: The Defendant hereupon sues out a Prohibition, which he exhibits before the Bishop, the Ecclesiastical Judge. This the Bishop refuses to admit, and notwithstanding the same, proceeds in the cause. Complaint hereof being made to the Court granting the said Prohibition, an Attachment is awarded against the Ecclesiastical Judge*: He is apprehended, and brought to answer for his contempt, in refusing to obey the Kings Prohibition. I question not now, but to have a free concurrency of every mans vote, allowing this to be very legal and just, because the Kings Authority in the Temporal Court, and in such matters as belong thereunto, is, in this case, contemned and disobeyed, and therefore ought to be answered for by the contemnors of it.

* It may be so, and issues out of the Chance y, although the Prohibition came from the Kings Bench, or Common Pleas. Lord Coke. cap. 8. 4 Instit.

Now

Now invert the case a little: A Bishop, the Kings Ecclesiastical Judge, convents before him in the Kings Ecclesiastical Court, a person bearing some civil Office, suppose the Mayor of a Corporation, or some Sheriff of a County, perhaps at the instance of a party, perhaps in a matter of correction. This Mayor or Sheriff refuses to appear upon the Summoning; or appearing, refuses to obey such Injunctions as are given him by the Bishop; and for his contempt therein, has a censure inflicted on him. Tell me, now, ought not this case be allowed as legal and just as the other? The reason is certainly the same, because the Kings Authority in his Ecclesiastical Court and matters belonging thereunto is contemned, and disobeyed, and therefore ought to be answered for by the contemnners of it; and if the reason be the same, partiality or prejudice may make a disparity; but in the true nature of the thing there is none at all: For the Kings Authority being equally committed to both spiritual and temporal Judge, in the concernancy of such things as belong to each; the violaters and contemnners of either (be they of what quality and condition soever) are justly punishable by those in either Jurisdiction, who are vested with Authority respectively for executing the same.

But there are those who will not be satisfied with all this; and that they may not seem to be without some grounds, they are not without their Objections against it: It will therefore be very pertinent to the present design, to free our former Assertion from such Inferences as hence may be made contrary to it. The Assertion was this, That the Exercise of Episcopal Jurisdiction over persons in Office of civil power

power and trust, is not any way intrenching upon, or infringing His Majesties Prerogative Royal. To this, there is first opposed that Branch and Article of the Statute of *Clarendon*, of which we find mention made by *Matth. Paris*, in his History of the Reign of King Henry the second, the chapter that begins thus [*Anno Domini 1164.*] in these words, *Nullus qui de Rege tenet in capite, nec aliquis Dominicorum Ministrorum ejus Excommunicetur, nec alicujus eorum terra sub interdicto ponantur, nisi prius Dominus Rex, si in Regno fuerit, conveniatur, vel justitarius ejus, si fuerit extra Regnum, ut rectum de eo faciat: Et ita, ut quod pertinebat ad Regis Curiam ibi terminetur: Et de eo quod spectat ad Curiam Ecclesiasticam ad eandem mittatur, ut ibidem terminetur.*

I did a little before, and do now again acknowledge, That the King of *England* may by His Prerogative Royal, when and to whom he pleases, give exemption from Ecclesiastical Jurisdiction: But that He has done it to persons in subordinate Offices of civil power, is not proved from this instance; all the dispute will be, who are comprehended under this expression (*Dominicorum Ministrorum*) what kind, and sort of persons are pointed at thereby: And here I say plainly, that persons in subordinate Offices of civil power, are not these *Dominici Ministri Regis*. My Lord *Cokes* Exposition hereof, is my warrantry and authority for saying so*. The place I refer to in the Margent, will inform us, That *Dominici Ministri Regis*, are such as belonged to the Kings Household, as the *Tenentes de Capite*, are such, as held of the King by *Grand Serjeanty*, and *Knights service*, and were to give their attendance on the Kings person whensoever required thereto. To these

* 2 p. *Instit.*
Exposition on
the 12th Ar-
ticle of the
Statute called,
Articuli Cleri.
9 Ed. 2.

is this exemption granted ; but note here withall, that the exemption in this Statute is not absolute, but proceeds with a reserve and a limitation ; that if the cause, any such person is to be convented upon, be judged by the King, or His Justice in the Kings absence to belong to the *Ecclesiastical Court*, thither both cause and person must be sent, and that person (notwithstanding such exemption) be proceeded against, and that cause there be determined. That which is in the principal aim and provision of this Statute, is this, that the King be made acquainted before any censures be inflicted on any account, upon any of His servants and attendants.

But there is something further objected (and that supposed to be more forcible) by a late Author, who has put himself to the expence of a great deal of labour and industry, in searching out of some presidents, and (as he conceives) warrantable Authorities whereby to evince the limiting and binding up of Episcopal Jurisdiction, in respect of persons vested with secular power, and command ; namely, that such persons are by peculiar (and that Regal) exemption freed from all coercive authority thereof. Among other things produced by him, I pitch especially on two, which appear to have the greatest stress laid upon them. The one is an ancient Record in the time of King *Henry* the third, of this Tenor. The Provost of *Bourdeaux* had been Excommunicated by the Archbishop of *Bourdeaux* without the Kings Licence ; whereupon, King *Henry* writes to that Archbishop, and sharply expostulates with him, *That he had Excommunicated His Provost without his Licence, and commands him forthwith to absolve him.* Upon the like account, saith the same Author,

Author, King *Edward* the First, *Clauſ. 8. Ed. 1. Dorſ. 6. and Clauſ. 31. Ed. 1. Dorſ. 11.* iſſued out Writs to his Biſhops, commanding them not to Excommunicate his Bayliſſs and Officers (and abſolve them, if Excommunicated) without his previous Licence and Order. Mr. *Pryn's Animadverſions, &c.* on the fourth part of Sir *Ed. Coke's Inſtit.* p. 404.

At a diſtant view of theſe inſtances produced, they may ſeem to have a goodly appearance, and to ſerve well the end intended in their production; but come we to a nearer inſpection, and more narrow examination thereof, and they will be found weak and uſeleſs for any ſuch purpoſe. Let it be granted, that by Bayliſſs are underſtood Sheriſſs, and other Officers in ſecular Authority, ſuch as have the Government in Corporations, as Mayors, Portrives *, &c. Yet I make no doubt to affirm, that ſtill the former Aſſertion ſtands firm and unſhaken. To make good this, a little recourſe muſt be had to other Hiſtorical occurrences in the Reigns of theſe two Kings, *Henry* the third, and his ſon and ſucceſſor *Edward 1.* For theſe will give us the beſt light and guidance to diſcover the grounds wherefore, and and the matters wherein, theſe prohibitory Writs iſſued out, and the ends aimed at by them. It has been ſaid, that that Age was the very *Criſis* of Regal, and Papal power in the Kingdom of *England*; then was the ſharpeſt conflict betwixt both, and thence forward the Papal power began to dwindle and decline: And as a diſeaſe makes the ſharpeſt aſſault upon Nature, immediately before it begins to abate; ſo did the Papal power at this time before its declenſion. The exerciſe of Eccleſiaſtical Jurisdiction, did then *de facto* derive from, and was de-

* *G'eſſar* added to that Edition of *Mat. Paris*, printed at London, 1640.

* Sir Richard
Bakers Chro-
nicle, the
Reign of Hen.
3d.

pendant upon the See of *Rome*; and so it came to pass, that the spiritual Court, or Court Christian, was reputed *aliud forum à foro Regio* and King *Henry* the third experienced many attempts made to limit, and restrain his Prerogative, inso much, as with great insolence, his Bishops threatned to Excommunicate Him *. They were propt up and supported by Papal Authority, and after such a daring and confident manner were they inspirited from *Rome*, as to look upon themselves in their actings utterly independent on the Crown; and then it was chiefly, that by the greatness and prevalency of *Boniface* Archbishop of *Canterbury*, Uncle to *Elianor* then Queen of *England*, that many Provincial constitutions were Enacted concerning matters of meer temporal cognizance; and encroachments were daily made on the secular Courts, and Excommunications, and other censures were thundred out against the Kings Bayliffs and Officers: But why? only, because they opposed them in the execution of such constitutions. Hereupon proceeded these prohibitions to the Bishops; upon these grounds they were commanded not to censure such Officers and Bayliffs; that is, for so executing their Offices, and discharging their Allegiance, and Duty to their Princes. Here was no intent to restrain the Bishops in the right exercise of their Jurisdiction touching such matters as truly belonged to it, but to keep them from exceeding their own bounds, and meddling in matters which were not cognizable before them.

And thus much appears plainly from that clause in the very Record it self (set down by this Author in the place before mentioned) *Si vero Præpositus noster aliquid deliquerit contra dignitatem Ecclesiasticam,*

*cam, faciemus eum juri parere, postquam delictum fuerit nobis denuntiatum, pro quo interim eum abso-
faciatis.* So that here is no more than what the ordinary Writs of prohibition do import. The King requires to be informed of the true state of that cause his Officers are convented upon, so he requires to be in the case of any of his other Subjects, upon address made to him concerning the same. If the matter be found to belong indeed to Ecclesiastical cognizance, the parties concerned therein, be they in any office or place of power (so as belongs to the present case) they must be subject thereunto: But if the matter do not so belong, the King will rescue them thence, and shield them with his Regal protection, and not suffer an incompetent Court to have any authority over them.

But see the ill luck that this Author has in al-
ledging this Record, for whilst he makes a shew of
advancing the Kings Prerogative in one kind, he
does really depress it in another: I cannot contain
my self from calling upon the Reader, and desiring
him to observe, and then wonder, that any one
should insist upon this Writ, as any way advantagi-
ous to the thing he bestirs himself to make good
thereby, when it is said in the very body of it in re-
lation to the Bishops—*Non attendentes quod ab ordi-
nariis locorum non possint Excommunicari Ballivi no-
stri, nisi de Excessibus eorum prius fuerit nobis relata
querela propter sedis Apostolicæ nobis indulgentiam privi-
legium.* I wish the Reader would be at the pains to
consult the very Record, set down by this Au-
thor in the place of his Book, referred to be-
fore.

And I pray, let any one consider this advisedly, and then tell me, What right does that man to the Crown of *England*, that whil't he appears mightily busied in asserting the Supremacy thereof, will yet make it dependant on Papal Authority? Is it come to this, That the King of *England* must ask leave of the Pope to put any restraint upon his own Bishops? The production of this Record makes better to gratifie the Papists, than to prove the thing it is produced for; though, in truth, neither the one, nor the other, gets any real advantage hereby. Historians observe many miscarriages in this Kings Government, during his long Reign of fifty and six years; among which, this application which he made to *Rome*, was not the least: The most knowing of his Subjects were much displeased thereat; for, as one Historian informs us* (and he a Votary to the Pope) in another case hapning but two years before, viz. in the 36th year of this Kings Reign, and which this passage must undoubtedly refer to) *Non sine redargutione peritorum hæc fecit Dominus Rex quod scilicet conquestus fuerit super hæc Domino Papa:* The Pope to be sure was forward enough to engage himself in the concerns of Princes, and so would make himself more officious, to gratifie the King than was needful; whereas the provision which by the Laws was made against any such encroachments, and the Kings own Regal power to put the same Laws in execution, would have given him better relief, than any indult or dispensation from the Pope could do.

* *Mat. Paris.*
Anno 1250.
p. 777.

Well, upon the Reasons before specified, prohibitions issued out from King *Henry*, to keep the Bishops from censuring his Officers; but notwithstanding

ing them, still they would be encroaching on the Kings Rights in his temporal Courts, and so they continued to the time of King Edward the first, the son and immediate successor of the former King; and thence proceeded the issuing of that Kings prohibitory mandates, *Requiring and commanding the Bishops not to Excommunicate his Bayliffs and Officers without his previous Licence and Order*: That is (as by what is to be collected from the state of affairs in these times) until the King fully understood the nature of the cause these Officers and Bayliffs were convented upon; for, as I declared before, they were often censured and excommunicated, because they opposed the Popish encroachments on the Kings temporal Rights; therefore the King would understand the true grounds of such proceedings, that if the matter were of civil concernment, his Officers might be freed from such vexatious and unjust prosecutions; but if it appeared to be of Ecclesiastical cognizance, they were then delivered up to the Jurisdiction thereof.

This, I conceive, to be the very genuine and true meaning hereof, for these reasons; first, because it is consonant to the end and purport of other Writs of the like nature; the Author has not recited these Records at large, which if he had done, very probably something plainly directing to this conception might have been found therein. Moreover, by the Statute called *prohibitio formata de Statuto Articuli Cleri**, made the beginning of King Edwards Reign: The spiritual Jurisdiction is not at all restrained subjectively, that is, respectively to persons being of this or that condition or quality; but only objectively as to causes, namely, such as had been usurped

* Which Statute had reference to certain Articles of the Clergy exhibited in Parliament, held Anno 31. Hen. 3.

usurped before by the spiritual Courts. Lastly, this is made good also from approved practice in this very Kings Reigo, as will appear by this remarkable story that now follows.

Thomas, the Noble Earl of Lancaster, had to wife Alice, only Daughter and heir of Henry Earl of Lincoln; at the same time, John Earl of Warren was married to King Edward the first his Neece; yet the said Earl Warren by great force, and strong hand, caused the said Alice Countess of Lancaster to be fetched from the Earl of Lancasters house in Canford in Dorsetshire, and in great pomp and bravery (in despite of the Earl of Lancaster) to be brought to him to his Castle of Ryegate in Surrey, where they lived in open adultery. John Langton was then Bishop of Chichester, and Chancellor of England; and being a man of a brave spirit, and fearing not the face of great men, according to his office and duty, he called the said Earl Warren in question, for the said shameful and open Adultery, and by Ecclesiastical censures Excommunicated him for the same, as he well deserved, sayes my Lord Coke, who reports this Story*.

* Exposition
on the Statute
called, *Arti-
culi super
Charta Anno
22 Edward 1.
page 573.*

This hapned about the 29th year of King Edw. I. and surely is an instance proper to inform us what the right state of Ecclesiastical Jurisdiction was then; and that supposing the matter to be indeed belonging to the Ecclesiastical Tribunal, no person of greatest dignity under the King, nor any others in civil office and place of power are exempted from it, nor did the Kings prohibitory Writs give any such exemption.

Thus it was while the Ecclesiastical Jurisdiction did *de facto* stand divided from the Crown, and before our Kings re-assumed their Rights in the same; but

But forasmuch as now there is an entire Union of both jurisdictions in one supream King and Governour : the exercise of the Ecclesiastical jurisdiction is certainly at least as extensive, as full, and as Universal now as it was before. And whereas the obtaining and having the Kings *leave and licence* to the inflicting any censures on His Bayliffs and Officers, is mentioned in those prohibitory Writs, whence it may be inferred, that admitting, Ecclesiastical judges may proceed against, and censure (occasion so requiring it) the Kings Officers in civil powers; yet the Kings *leave and order* so to do, must first be had and obtained : To this, I say, that now by the right constitution of Ecclesiastical jurisdiction, and as the exercise thereof is derived from the Crown, the Kings *leave and licence* in the whole procedure thereof, is implicitly indeed, yet as truly and certainly had and obtained, as if a particular and express mandate from the King were issued out upon each several cause, civil or criminal that belongs to the cognizance thereof : The Ecclesiastical judge acts by a power as immediately derived from the King, as any Temporal Judge does : The Bishop is as amply and compleatly Commissionated for the Exercise of Ecclesiastical jurisdiction, both *subjectively, and objectively, in foro Externo & contentioso* (which Commission passes in His Majesties Letters Patents for Restauration of the Temporalities) as any other Temporal Judge in any of the Kings Temporal Courts : And upon this account it is as truly affirmed, That nothing is done in the Ecclesiastical Court *Rege inconsulto*, as the same is said concerning the Temporal Court. *Habet Rex diversas Curias, in quibus diversæ Actiones terminan-*

tur, sayes *Bracton*, and he lived in one of these Kings Reign, viz that of King *Henry 3d*, whence Sir *Edward Coke* draws this conclusion, *That the King hath committed and distributed all his whole power of Judicature to several Courts of Justice*; and in this he refers to Ecclesiastical Courts as well as Temporal: And from the Statute 24 *Hen. 8. cap. 2.* he declares thus, *That the Laws Ecclesiastical and Temporal, were, and yet are administred, adjudged and executed by sundry Judges**, &c. Hence is that saying, *That the King does judge by his Judges*. Thus in matters of Ecclesiastical cognizance, the King judges by His Ecclesiastical Judges; and whatsoever persons are any way concerned therein, and impleaded in the Ecclesiastical Court, the King by His Ecclesiastical Judges has the hearing of them, and determining, in their causes, and *His leave and licence* goes along therewith.

* His Jurisdiction of Courts,
cap. 7. p. 70.

By vertue of being thus deputed and commissioned by the King, the Bishops have and execute an exterior Jurisdiction, which is as extensive and universal over all persons in causes belonging thereunto, as is the Temporal Jurisdiction, in the management of the Temporal Judges; and where the Kings Commission is, there is His power, and there is His consent: And where that Commission does not abridge and limit, there all proceedings made by power from it, have assuredly the Kings leave and licence in conjunction with them.

But if still, notwithstanding all that has been said, it be persisted in, that there is a disparity of power in the two Jurisdictions as to the extensiveness thereof *subjectively*, so as that the Ecclesiastical Judge in his way of proceedings may not, but the Temporal

Temporal Judge in his way may proceed against any civil Officers, as Mayors and Sheriffs, &c. found Delinquents in any kind. I demand, How does it appear to be so? What Law is there that constitutes this Disparity? What legal course prescribed and set down to restrain the Ecclesiastical Judge, in case he will be intermeddling with such persons? (for it is irrational to imagine there should be such a Law, and yet that it should be destitute of sufficient means to uphold and maintain it self by.)

Truly I am not so vain, as to say there is no Law extant which constitutes this Disparity, because I know no such; but I have been seriously inquisitive and diligent in searching after this, but cannot attain a knowledge of any such; and would any be so kind to inform me, I should thankfully own that kindness.

Next, for any legal course prescribed and set down to restrain Ecclesiastical Judges, in case they will be intermeddling with such persons: If there be any such, it must be one or other of these three ways. 1. By Writ of *Provison* and *Præmunire*. Or, 2. By a Writ of *Indicavit*. Or, 3. By a Writ of *Prohibition*. (By one or other of these) the Ecclesiastical Judge is restrained in his proceedings, and commanded to desist from prosecuting further such matters, as being before him, are referred to, in those Writs.

Now concerning the first, *That Provison and Præmunire* has no place nor use in this matter, I do for the present plainly declare, and afterwards I shall have occasion more largely to prove it. 2. Then, for the Writ of *Indicavit*, that is notoriously known to lie there *where a Suit of Tythes is commenced in*

the Ecclesiastical Court, which does amount to a fourth part or above of the whole Benefice; or it lieth for the Patron, where his Clerk is impleaded for the Advowson (i. e.) the Right of Patronage.

3. There remains only the Writ of Prohibition: This is said to be two-fold; *Prohibitio Juris*, *Prohibitio Hominis*. *Prohibitio Juris* is such as is grounded on any Statute or Law of this Land. *Prohibitio Hominis* is such as has no precise word or letter of the Law to sustain it, but is raised up by Argument, and by way of surmise, and as the wit of man will suggest.

Now put these Prohibitions of both sorts together, and I dare boldly affirm, that none of either kind have been, or can, or ought to be granted, so as to supersede the Ecclesiastical Judge from his legal proceedings against any person (where the matter proceeded upon is indeed of Ecclesiastical cognizance) merely because such a person bears some office of civil power, is a Mayor, Sheriff, Portrieve, or any other in like place of authority: And this is the reason why I take so much confidence in delivering this affirmation, because it is the incompetency of the cause brought into tryal before the Ecclesiastical Judge; and not this or that quality or condition of the parties proceeded against, that alwayes makes way for moving for, and granting of, a Prohibition.

Thus much has been said for the removal of these Objections, and still it is clear and evident, that the exercise of Ecclesiastical Jurisdiction by the Bishop over all persons whatsoever within his Diocese, in matters and causes truly belonging thereunto, tends not at all to the impairing or invading the Kings Royal Prerogative.

It

It has been the glory of our Kings to keep the Rights and Liberties of the Church safe and entire, and never to interpret a just exerting and using of their Jurisdiction, to be a diminishing of their Royal dignity. In some old Presidents of the Writ *de Excommunicato capiendo* (A privilege peculiar to the Church of England above all the Realms of Christendom that I read of, sayes Dr. Cosen, *Apol. par. 1. p. 9.*) The King declares thus, *Nolumus quod libertas Ecclesiastica per nos vel Ministros nostros quoscunque aliquantulum violetur* Register. in bre. orig. p. 69. a. And again, *Jura & libertates Ecclesiasticas illas volentes in omnibus observari, ibidem.* But I have one greater instance hereof to add here: At the time of His Majesties Coronation, the Oath that He is pleased then to take, has this Article therein—*That He will grant, keep and confirm to His people of England, the Laws and customs to them granted by the Kings of England, His lawful and religious Predecessors; and namely, the Laws, customs and Franchises granted to the Clergy by the glorious King St. Edward his Predecessor, according to the Laws of God, the true profession of the Gospel established in this Kingdom, agreeable to the Prerogative of the Kings thereof, and the ancient customs of this Land.*

Afterwards, one Bishop present, reads this Admonition to the King before the people with a loud voyce—*Our Lord and King, we beseech You to pardon and grant, and to preserve unto us, and to the Churches committed to our charge, all Canonical Privileges, and due Law and Justice; and that You would protect and defend us, as every good King ought to be a Protector and Defender of the Bishops and Churches under His Government.*—Wherefore the

the King answereth with a willing and devout heart, I promise and grant my part, and that I will preserve and maintain to you and the Churches, &c. By Canonical priviledges that belong to them and their Churches, there must needs be implied the Honour of their several Orders, as, that Bishops should be above Presbyters, &c. together with all their due Rights and Jurisdictions. Dr. Stewards Answer to a Letter concerning the Church, and the Revenues thereof.—

Of these Laws, Customs and Franchises granted to the Church and Clergy, this of actual exercising Jurisdiction Ecclesiastical in causes belonging thereto, is (as I have before shewed) one, and that a principal one too: Now to imagine, that the King will bind Himself by Oath to the confirming of such Charters and Grants, which he either resolves not to keep, or such as are detrimental to Him, and tend to the impairing His Prerogative, is neither consistent with Reason, nor Loyalty, nor Religion. Here is no need of that Writ in the Kings behalf, called, *Ad quod Damnum*: As what damage and prejudice will come to the King by confirming Episcopal Jurisdiction, and allowing the actual exercise thereof; for, in truth, the exercise thereof kept in its right constitution and dependance (for such a Jurisdiction is only here intended) is so far from diminishing the Right, and darkning the Jewels, of the Crown, that they receive a greater lustre and resplendency thereby.

We have spoken of the Kings Oath, which He is pleased at the time of His Coronation to take for the benefit and security of His Subjects: There is also the Subjects Oath which they are to take in Recognition of the Kings Sovereignty, and in testimony

testimony of their fidelity to him, I mean, the Oath of Supremacy; a consideration of which is very proper and pertinent to the matter in hand, especially, that one branch which the Taker thereof swears to, and declares that—*To his power he will assist and defend all Jurisdictions, Priviledges, Prebeminences and Authorities united and annexed to the Imperial Crown of this Realm.* In which words, the Ecclesiastical Jurisdiction is (if not only) yet specially aimed at : Now let such persons that are placed in Offices of civil Power and Authority, and conceit themselves not subject to Ecclesiastical Jurisdiction (because of their being in such Offices) and who yet do take this Oath at the entrance into their Offices; let them, I say, soberly and advisdly bethink themselves, how consistent an Oath taken for the observance and defence of the Ecclesiastical Jurisdiction, is, with a plain disowning of such Jurisdiction as to themselves, or impugning of it, and bearing themselves disobediently to it, or exempting themselves from it, in matters which the Law has clearly appropriated to it : or, in a word, to act any thing to the prejudice of the lawful proceedings thereof. It is frivolous and vain to alledge, that they acknowledge, and will submit to this Jurisdiction in the King, and yet at the same time deny their submission to the exercise of it by the Bishops. This, I say, is a vain and frivolous Allegation, because it is not a notional and speculative acknowledgment, that such a Jurisdiction is united and annexed to the Imperial Crown of this Realm, which only fulfills the import of this Oath : But it is an obedience in practice by submitting to the lawful exercise of it, that is the scope and intendment of it. Now the King exercises

cises no judiciary power in His own person, but commits it to His Judges (*the King hath wholly left matters of Judicature, according to His Laws, to His Judges**) And the Bishops are those Judges to whom the Ecclesiastical Jurisdiction is committed, and to them the execution thereof belongeth; now what is done in derogation of that power and authority (derivatively) residing in them, is done in like manner in derogation of the same power primitively; that is, as it is originally in, and derives from the King Himself. I have said thus much concerning this branch of the Oath of Supremacy, not that I take upon me to judge any man; but because I take it to be my duty to recommend the consideration of this thing, as a matter of very weighty concernment, and fit to be made with all sobriety and seriousness.

* Lord Cole.
4 Inst. p 71.

I sum up all delivered on this first Proposition under this Head, That Bishops proceeding by Authority, and deriving the actual exercise of their Jurisdiction from the King, are the Kings Ecclesiastical Judges, dispensing Justice in the Kings Ecclesiastical Courts, according to the Kings Ecclesiastical Laws. And that the same Jurisdiction reaches to, and over all persons whatsoever within their respective Diocesses; all which is agreeable to the Ecclesiastical Laws of these Kingdoms, and not repugnant to the Temporal Laws thereof, nor yet infringing in any kind the Kings Prerogative Royal; and therefore the Bishop of *Waterford's* Jurisdiction in the Case before laid down, was legally founded in respect of the persons proceeded against.

[illegible]

heard it, they concluded presently that the Bishop had taken a matter in hand; which he ought not to have moved a hand towards; as not appertaining to his jurisdiction; and so has usurped on the Temporal Courts: Nay, so strangely transported were some, that in their heats they did not stick to affirm, that the Bishop by doing what he did, had intur'd some heavy penalty, which they would not abate of an Ace, less than a *prelature* It self. And many, and hard, and bitter were the censures, that several open mouths pronounced upon him: But causes as well as persons are sometimes prejudged; and both were so in this case. As a preparative to the clearing, and making good, that both cause, and person were thus prejudged, I shall speak something concerning the matter of contract, so mainly insisted upon, and that which raised the cry: as if the Bishop grounded his proceeding on that contract, and therein encroached on the Temporal Jurisdiction.

Let it therefore for the present be supposed, That the Bishop did ground his Ecclesiastical proceeding on that contract (although indeed the cause was not so laid, yet supposing it were) the inference that is thence made peradventure is not good, as that the doing thereof was an encroachment on the Temporal Jurisdiction. Peradventure I say it is not. For I will not be positive in what I am about to write; but referring my self to better judgments, I freely submit to their decisions herein.

This I propose then, That all matters of contract, arising from, or upon causes originally of Spiritual cognizance, are not excluded from the Ecclesiastical Tribunal. I put this case not much differing from that which we have before us. *Tatum* a parishioner

of ~~Dale~~, with leave of the Parson, and rest of the parishioners, builds up an Isle, or Out-chappel, adjoining to the Parish Church of Dale, and intends to reserve the same to himself, and relations, for the use of a burying place, and undertakes to keep this Out-chappel, from time to time, in sufficient, good, and decent repair. Notwithstanding this obligation so to do, the repair of the same is neglected. If the question were put to me, before whom, and in what Court, *Tithes* may be sued, and compelled to make good the reparation thereof, I should not doubt to answer, that *Tithes* may be proceeded against by the Ordinary, *ex Officio*, or impleaded by any voluntary Promoter of the Office, *in causa reparationis Capelle*, &c. The Church wardens may present that neglect, and the person guilty of it. One Article usually given to present upon, is this, Whether the Church or Chappel in the Body, and Chancel of it, be in good repair; If it be not, through whose default comes it to pass, that it is not; and this Article is grounded on the 93^d Canon of this Church. So then as the neglect and default is punishable by the Ordinary; the reformation likewise thereof in making good the repair, (otherwise by contract undertaken for) is to be enjoined by the Ordinary.

Moreover, Pensions out of Churches, or any Annual Portion becoming due from any Colledge, Bishoprick, Cathedral Church, or Deanry, to be paid to any Rector, Vicar, or Curate of a Parish Church; if they be detained, the same are demandable, and to be recovered in the Ecclesiastical Court, according to the Statute, *viz.* 34 35 Hen. 8. cap. 19. Now the Right of paying any such Pensions, and Annual

Parsons grounded on Ancient contract, obliging
 thereto. In Compositions Real for Tythes, made either
 between the Parson of one, and the Parson of ano-
 ther parish, for the stating and settling each others
 right, and to prevent litigious impleadings of each
 other. Also compositions made between the Parson
 and some one or more of his parishioners, touching
 the not paying any Tythes at all, but a certain, set-
 tled, and determinate sum in lieu thereof. This is
 usual in this Kingdom for Mills that grind corn, to
 compound for a certain sum, to be paid instead of
 the Tithes. Now the Ecclesiastical Judge before
 whom these compositions are to be alledged, may
 hear and determine thereof. *Tit. 12. c. 1. par. Sir
 Thomas Ridley's Kim. Sec. part. 3. chap. 2. sect. 6.
 Coten. Avel. p. 1. c. 10.*

There is a cause of Ecclesiastical cognizance, cal-
 led *Negotium Subtractionis Dotis causa nuptiarum
 promissa*. The case is thus: *Titius* in consideration
 of Matrimony, to be contracted and solemnized
 with his Daughter *Partia* by *Sempronius*, promised
 Ten pounds to *Sempronius*. The Matrimony being
 solemnized, and *Titius* not paying the promised sum,
Sempronius impleads him before the Ecclesiastical
 Judge for the same, *Titius* sues out a prohibition;
 Notwithstanding which, *Sempronius* obtains a con-
 sultation, wherein is affirmed, That the Court Eccle-
 siastical may proceed therein. This you may find re-
 ported by *Dr. Coten. Avel. p. 1. c. 26.* And the se-
 veral Opinions of Common Lawyers, concurring
 therein. More instances might be given of this
 kind, to evince, That all contracts arising from ma-
 ters which are in their Original of Spiritual cogni-
 zance,

zance, are not excluded from the Ecclesiastical Tribunal; observe what is further said: Although promises and contracts of Money, are generally pleadable in the Courts of the common Law, yet as Bracton writes, *Causa de rebus promissis ob causam Matrimonii, in foro Ecclesiastico terminari debent, quia causa juris & jurisdictionis est principale, ejusdem est accessorium*; And in another place he gives a reason for the same, *quia semper videndum propter quid, aliud sit, aut permittatur*. Zouch. Jurisdiction of the Admiralty. p. 64.

I do not affirm an absolute parity between these cases, and that which is before us; I refer'd my self before, and do now still submit what is said to the judicious decisions of others: But, this is yet upon the supposal, that what is objected, was really so; as is objected, the contrary to which is most clear; for as touching what relates to this Vindication, there is no need at all, to strain any doubtful or disputable case, to make it favour the matter in hand; for the contract here pretended, was not insisted upon, so as to make a foundation of any jurisdictional proceeding, in the Ecclesiastical Court thereupon.

'Tis true, the contract gave occasion to the Bishop to call upon, and admonish the Mayor, and Sheriffs of *Waterford*, to look after what belonged to their duty to be done. They being thus stirred up, make rates, levy, and collect Money from the several Inhabitants for this end, of repairing the Body of the Cathedral, &c. They receive the voluntary contributions for the Bells. The Money thus levied, collected, and received, is little disposed of, for the uses intended: The Church remains unrepaired, the other works are neglected & now what was regularly

larly, and legally to be done in this case, was regularly and legally entred upon; the work of reparation it self; the accounting for Money levied, raised, contributed and received for that purpose, and other matters relating to the Church, are the grounds of this proceeding, as by the several Acts of Court remaining in the Registry of *Waterford*, may more fully appear.

Now that these are justifiable grounds, whereon legally to found an Ecclesiastical proceeding, comes to be made good, which I shall do, by laying down and proving these three Assertions.

1. The rendring an accompt of Moneys given, and received for pious causes; and the right disposing thereof, belongs to the Bishop within his own Diocess, to call for, and see performed.

2. Reparations of Churches, with all the incidents thereunto, both by Temporal, and Spiritual Law, appertain to Ecclesiastical cognizance.

3. The penalty of *Præmunire* will not be incurr'd by any Ecclesiastical Judge for making such proceedings.

1. The rendring an accompt of Moneys given and received for pious causes; and the right disposing thereof, belongs to the Bishop within his own Diocess, to call for and see performed: Pious causes are set down in the Law to be of many, and various kinds, and to enjoy many and various priviledges; for the many and various kinds of them, see *Leg. illud*, & *Leg. Sancimus. Cod. de sacro-sanctis Ecclesiis*; and *Lindwood in cap. ita quorundam. ad Verb. pias causas. de Testamentis lib. 3. Provincial. Constitut.* Among which, these especially fall under our disquisition; namely, Legacies, or other Donations, either bestowed

bestowed, for the erecting of Hospitals, and Almshouses, and endowing them with sufficient means, and adding to such endowments, for the sustentation and maintenance of aged, sickly, decrepid, weak and helpless persons, as Prisoners, Orphans, Widows, &c. Or such as are bestowed for the erecting, and repairing of Churches, and providing of such decent Ornaments, and other Utensils, as are requisite therein; also such as are bestowed for the celebration of Divine offices, at certain times, and seasons appointed.

Now although I have delivered this Assertion universally, yet it is to be understood with restriction to those kinds of pious causes, that I have particularly specified. The Imperial Law allows a very ample and large power to Bishops, in order to the regulating and disposing of these to their intended purposes, *Authent. collat. nona. Tit. de sanctissimis Episcopis, cap. 23.* See also the Canons called the Apostles Canons, *cap. precipimus* 40 *ibidem.* Item *cap. Tu nobis*; & *cap. Johannes. de Testamentis.* And concerning such things as belong to Almshouses, and Hospitals of any (but Royal) foundations, our Statute Law is very express herein—*And as to other Hospitals which be of another foundation, and patronage than the Kings, the Ordinaries shall enquire of the manner of the foundation, estate and governance of the same, and of all other matters, and things necessary in this behalf, and upon that make correction and reformation after the Laws of Holy Church, as to them belongeth, An. 2. Hen. 5. cap. 1. Stat. r.*

And whereas in some particular cases of this nature, it is appointed by the Statute 43 *Elizab. cap. 4.* That by certain Commissioners authorized thereun-

to under the Great Seal of England, such Lands, Moneys, Goods, and Chattels as have been given to such Godly uses, as are there mentioned, should be rightly ordered, and all misemployings thereof be prevented and regulated; yet there is a proviso in that Statute, to this end—*That neither this Act nor any thing therein contained, shall be any way prejudicial, or hurtful to the Jurisdiction of the Ordinary, or power of the Ordinary; but that he may lawfully, in every case execute the same, as though this Act had never been had or made:* Rastall.

And where there is a grant of Money, or other moveable goods, made by any person either in his life time, or bequeathed by Legacy, at the time of his decease for such pious causes, as the erecting and repairing of Churches, or buying such decent Ornaments, and Furniture, as belong to the same, &c. That the Money, or other moveable goods thus granted, or bequeathed, be disposed for such uses, and according to the intent of the Donor, belongs to the Bishops care to look after, and see performed: Inasmuch, as they in whose hands, such Moneys and Goods are detained, may be converted before the Bishop, and made to render an account thereof. And the prosecution made herein, may be either of office, or at the promotion of the Churchwardens of that, or such other Parish, to which the same is given. *Detentio legatorum ad usum pauperum. Quilibet alium pium usum: detentio bonorum ad publicos usus Ecclesie destinatarum, ad Episcopalem jurisdictionem pertinent.* *Colem Tab. vii. A.*

This purpose is, that in Articles given at Episcopal Visitations, one is to enquire what Lands, Possessions, or other Rights are belonging, or deemed

and reputed to belong unto any Ecclesiastical Benefice, and in whose hands they are, and how they have been in their hands: Which Article of Enquiry is grounded on the 44th Canon of this Church of Ireland; and cognizance of these things belong to the Ecclesiastical Courts, and may (as I said) be taken therein, by the Ecclesiastical Judge, either of meer office, or office promoted, &c. and whether soever it be, that such Rights become due by Legacy, or any other Donation.

A man by his Testament bequeaths Goods to the Fabrick of a Church, the Executor is to be sued for this in Court Ecclesiastical, and thus it is determined at common Law: see for this a consultation granted. *Register. p. 57. a.* cited at large by Dr. Cosen, *Apol. par. 2. p. 100.* But what if any Issues and profits out of certain Lands and Tenements growing, and belonging to any Church, be detained? They also may be sued for, and recovered in Court Ecclesiastical. If a *Terr-Tenant* holding Land, that hath usually paid for such a Tenement a pound of wax, or such like, unto the Church, do withhold it, the Churchwardens may sue him for it in Court Ecclesiastical. Dr. Cosen. *par. 1. p. 45.* And he alleges for this an ancient Author, one Goodall, who wrote in the time of King Henry 8th, and intituled his Book, *Of the Liberties of the Clergy by the Laws of the Realm.*

And observe, that although a pound of wax, and such like, is only here mentioned, yet it is not the tenuity, and meanes of the thing that gives a right in this case to sue for it in the Spiritual Court: But because there is a right so to do, the same course of proceedings may be followed, were the profits so

accruing, and so to be disposed of, far more valuable. I will instance but in one case more (which the Dr. mentions in *p. 3, chap. 8. p. 103.*) An Ordinary proceeded *ex Officii sui debito*, to the correction of crimes, and excesses of those that were under his jurisdiction: And amongst other objected Articles against a Knight, for not sufficient reparations of a Church, tending to the correction of his soul, by reason of his detaining of that, which he ought not: This, sayes he, is allowed in the Register, *Tit. consultationi fol. 53. 6.* I might, but shall not need, to add more for the proof of this first Assertion.

2. Reparation of Churches, with the incidents thereunto, both by Temporal and Spiritual Law, appertains to Ecclesiastical cognizance. I call these the incidents thereunto. The business of making Rates for such Reparations, inspecting the money so rated; questioning those that refuse to contribute their proportion; and calling to account for money so collected. These are all dependant on the other, in case of any judicial proceeding that shall happen to be made thereon: the reason is given in this, as in all other things of like nature, in that excellent law; *Nulli prorsus. Cod. de iudicio*; the sum of which is this, *Ne contumacia causarum diudantur.* A. m. b. n. n. a. i. d. t.

Now the Temporal Law is expresse for the proof of this, in the Statute of *circumspecte agatis. An. 13. Edwardi Primi.* Among the thirteen cases there recited, and appropriated to the Ecclesiastical Tribunal. This is one, *viz.* Prelates may punish for leaving Church-yards unclosed; or for that the Church is uncovered, or not conveniently decked. This Statute is also inserted in the provincial constitutions, collected by *Lindwood, Tit. de foro competentis*; and so is be-

is become part of the Kings Ecclesiastical Law. Several Common-Law cases are cited for this by *Merrison* in his Guide for Church-wardens, *sec* 37. And note, sayes he, That the Ecclesiastical Court hath cognizance of the reparation of the Body of the Church. He instances in the Body of the Church, because (not excluding the other parts) mention is there made of the Parishioners, to whom the repair belongs, and who are to contribute to the same.

Dr Cosin in the First part of his Apology, *cap*. 7: informs us thus, touching this matter: When a Prohibition was sued out (sayes he) for proceeding Ecclesiastically in a matter concerning the Reparation of the Body of a Church. A judgement was given thereupon, in a consultation to this effect (which he sayes is recorded in the Register, cited by him thus [*pag*. 43. *ubi* *prohibuitur* *prosecutionem* *quod* *super* *reparatione* *defectuum* *corporis* *Ecclesie* *juxta* *consuetudinem* *approbatam*, *facienda*, *procedere* *poterunt*, *et* *in* *facere* *que* *ad* *forum* *Ecclesiasticum* *non* *possunt* *peruenire*, *dicta* *prohibitione* *non* *obstante*]. And by reason of defects in the reparation of a Church (sayes the same Author) Money it self may lawfully be sued for in a Court Ecclesiastical; as appears by another consultation, *Reg*. *pag*. 48. And so it is provided in the very Statute of *circumspice* against The words are these mentioned in it. In which case none other penance can be enjoined but pecuniary. See *Lindwood ad verbum. Sub pena. cap. Sint Ecclesiarum Rector. De Officio Archidiaconi. Lord Coke de jure Regis Ecclesiastico, p* 9.

3. The penalty of *præmunire* will not be incurred by any Ecclesiastical Judge, on account of any proceedings of this Nature. The proof of this Asserti-

on depends upon two things, *viz.* The truth of the two former Assertions, that the cause proceeded upon, was properly belonging to the Ecclesiastical Tribunal, and that the Bishop the Ecclesiastical Judge proceeding therein, acted not by, or from any foreign jurisdiction or power. Both these are so manifestly true, that I might supersede my self the labour of saying any more therein. But because some mens mouths were opened wide, and loud in that point, as if when by Law they could not, they would yet by their clamorous voices, and confident affirmings, involve the Bishop in the penalty of this Statute: It will therefore, I think, be both a reasonable undertaking, and proper to our purpose, to write something more particularly concerning the same; and the rather, because the imputation of incurring the penalty contained in that Statute, is oftentimes (at least) threatened against those that are careful, and active in the discharge of their Office of Trust, in matters of Ecclesiastical Jurisdiction.

It has been the observation of a late Historian, (*Fulter, Church History, Book 4. p. 149.*) that this Statute of *præmunire* has had the hard hap not to be honoured with so many readings thereon, as other Statutes: And therefore I suppose, the course now taken by me, in speaking something hereof, will appear the more excusable: If not having opportunity of viewing the few readings, that have been made thereon by the Learned in the Common Law, I have recourse to such other Writers, as upon some occasional emergency, or other incidental matter, have treated thereof.

The Writ of *præmunire facias*, grounded principally on the Statute, made in the 16 year of King

Richard

Richard the Second, cap: 5: is awarded against those that have procured any Process, or Bull of the Pope from *Rome*, or elsewhere, for any Ecclesiastical place, or preferment within this Realm, or doth sue in any foreign Ecclesiastical Court, to defeat, or impeach the Kings Courts; and the party offending herein, is liable to grievous penalties, mentioned in the said Statute: This account of a *præmunire*, (as abstracted by him from the Statute) I take from Sir *Thomas Ridley*, in his View of the Civil and Ecclesiastical Laws, p: 3. c. 1. Sect. 1.

Some later Statutes (says Dr. *Cowell* in the word *præmunire*) do cast this punishment on other offenders: As denying the Kings Supremacy the second time, by the Statute 1 Elizab. 1. falls under the punishment of *præmunire*. And by the Statute 13 Eliz. cap. 2. He that affirmeth the Authority of the Pope, and refuses to take the Oath of Supremacy, falls under the like penalty: so they do likewise by the Statute of the 13 of the 2. cap. 1. that are seditious talkers, or affirm the Q. Majesty to be an Heretick.

Now let us put all these together, and whatsoever else is collected from the Statutes made before, and after the Reign of King *Richard the Second*, touching these matters: Put all these (I say) together, and what, either in gross or tale, will they make to disadvantage the matter we have in hand? or what can be found, either in the Bishop, or his proceedings, impeachable from thence? Is it his being appointed to, and settled in the Episcopal See of *Waterford* and *Lismore*? None can affirm that: For he receives not this by any Bull from *Rome*, but by Donation and Investiture from the King of *England*. Is it the actual exercising of Ecclesiastical Jurisdiction

jurisdiction within his Diocess? That cannot be neither; because he is not empowred to this by any Foreign Authority, but by his Majesties Letters Patents for his Consecration; and by His Majesties Letters Patents for restoration of the Temporalities. Are any of his proceedings against the Kings Crown and Dignity? No, They tend not to promote any foreign power, but to maintain the Kings Prerogative and Supremacy, over all persons in causes Ecclesiastical. Does he refuse to take the Oath of Supremacy, or fall under any of those crimes mentioned in the Statutes of *Q. Elizabeth*, and which are liable to the penalties of *præmunire*? This cannot be said, He took the Oath of Supremacy, on other occasions required by Law: And he took it (as is appointed) at the time of his Consecration. Lastly, are any things done by him, whereby the Kings Courts are impeached and defeated? Not this, because He the Kings Ecclesiastical Judge in the Diocess of *Waterford* and *Lismore*, hears and determines matters of Ecclesiastical cognizance in the Kings Ecclesiastical Court there, according to, and by the Kings Ecclesiastical Laws.

Whence then may we conceive, arises this imputation of a *præmunire*? There is indeed no ground for it, but in the fancies, (and would I had not reason to say) in the wilhes of such, as are so ill affected, that they do not patiently endure the Episcopal office, much less allow the exercise of any Jurisdiction by a Bishop.

Observation of former times, and reading, besides present experience of things now, brings to our knowledge the restless practises of some, that endeavour by all contrivances of wit and policy, to load

load with odious charges the exercise of Episcopal Jurisdiction; and (if it may be done) to draw it within the penalties appointed by this Statute of *Præmunire*: yet there are many sober and wise men, who have declared openly enough their opinion, That as all Jurisdiction whatsoever in these Kingdoms, is radically in the King, and so an Union of Ecclesiastical and Temporal Supremacy, is in him; there can therefore lie no *Præmunire* at this day against any man exercising Jurisdiction subordinately under the King; which every Ecclesiastical Judge both doth, and acknowledges himself to do: See to this purpose Dr. Cosen in his *Apol. p. 1. cap. 18.* Sir Tho: Ridley *ut supra*, Dr. Cowell in the word *Præmunire*: Whatsoever, sayes he, is now wrought or threatened against the Jurisdiction Ecclesiastical, by colour of the same [Statute of *Præmunire*] is but in emulation of one Court to another, and by consequent a derogation to that Authority, from which all Jurisdiction is now derived, and the maintenance whereof, was by those Princes especially purposed: Nam cessante ratione, cessat Lex,

Sir Thomas Smith, a person of great judgment, one who well understood His Sovereigns Right and Privilege, and wou'd not detract any thing in the least manner from it, declares his sense herein after this manner—*Verum in præsentiarum Curia Christianitatis perinde atque cætera omnes, virtutem vim auctoritatem imperium, jurisdictionemque suam, præterquam Serenissima Majestati & Diademati Regio, post immortalẽ Deum, Potestati aut Principi, accepta refert Nemini. Id si verum esse concedas (quod esse constat verissimum) tum Sanctioni Statuaria de Præmunire nullus per Angliam locus relinquitur; quando alibi quam*

in Curia Regis, ac Regina, jus nullum dicitur. De Repub. Anglicana. lib. 3. cap. 11.

There is a certain word indeed in that Statute, viz. [*alibi*] the Court of *Rome*, or elsewhere; and this word is supposed, to be meant of, and refer to, Bishops Courts: So I read that *Fitz-herbert* a great Lawyer reporteth it. *Tit. prammire num. 5.* Howbeit, saving all respect to so great a Lawyer, yet this is judged by many grave, and learned persons, (see those before mentioned) to be a forced and groundless construction made thereof. The word it self is of an ambiguous and variable signification; it may refer to the Bishops Consistories, and it may, as well, not refer to them; it may refer to any Forreign Courts and Judicatories, and any other Courts of these Kingdoms, that are not Courts of common Law *, or any Courts whatsoever (most agreeable to the purport of that Statute) wherein any thing is done *in derogation of the Regality of our Lord the King*; it is a slippery and uncertain word, none can take sure hold of it; no determinate and precise meaning can be affixed to it.

* So it seems it may refer to the Court of Admiralty, in my Lord Coke's opinion. 4. Instit. cap. 22.

This word then being so doubtful and uncertain, and the penalty of this Statute being so severe, as Imprisonment during life, forfeiture of Goods, Lands, Chattels, Tenements, Ejection out of the Kings favour and protection; and since the noted Rule is this, *in penalibus causis benignius interpretandum est.* L. 145. de Reg. Juris. parag. finali. Now it would be so far from a benigne, as to prove indeed a most rigorous sentence, to pronounce the falling under so great a penalty, on occasion of this expression, so full of ambiguity and uncertainty.

May I presume, with the good leave of the Learned in the Municipal Laws of this Kingdom, to interpose my conjecture concerning this word [*Alibi*, or elsewhere] (for where there is ambiguity, there is room for conjecture) I have the ground, of what I have to say, from Dr. *Gosen*, *Apol.* p. 1. cap. 18. It was in the sixteenth year of King *Richard* the second, that this Statute was Enacted, that was in the year of our Lord, One thousand three hundred ninety and three; at which time, and for some time after, the Schism about creating of Popes (which is reckoned, and so called, the Twenty ninth Schism, *Isaacksons Cronolog.* p. 353.) was very rise, and hot in agitation. *Boniface* the Ninth was at *Rome*, and *Clement* (called the Seventh) made by the French Cardinals, was at *Avignon* in *France*; here was at the same time, as had been before, two Popes actually exercising Papal Jurisdiction; both making Cardinals, and both striving to extend their power and authority so far, that other Kingdoms, as well as the places where they were resident, might be under the influence thereof: Now so it was, that this Statute of *Præmunire*, being intended for the utter exclusion of all Forreign Authority, it might be judged necessary to cut off all intercourse betwixt the Kings Subjects, and the Popes Consistory, whether at *Rome*, or elsewhere; and that Processes, and other judicial Writs, as well dated from *Avignon*, or any other place, as from *Rome*, might make the purchasers and pursuers of them, liable to the penalties intended by that Statute.

But there is something further alledged here, That although the Ecclesiastical Courts as now established, are not in the general intent included within this Statute; yet then surely they are, when causes belonging to the Temporal Courts, are by Ecclesiastical Judges retained, and proceeded in: I know it passes as a very current Opinion among many, That for an Ecclesiastical Judge to deal in any cause, not belonging to his Jurisdiction, is *Præmunire*: Great is the Authority that bears up this Opinion; and for the greatness sake of the Authority, many are the Adherers to it. In my Lord chief Baron *Bolton* Justice of the Peace, *cap. præmunire*. There is first a recital of the several Statutes, concurring in, and concerning this crime; then follows certain Book cases, or resolutions. (as his Lordship expresses it) added, for the better explanation of those Statutes. One of the said cases, is to this effect, *viz.* the 21. — *Note that the words of the Statute, are in Curia Romana vel alibi, which is intended in Curia Episcopii: And therefore if a man be Excommunicated, or prosecuted in the Spiritual Court, for a thing which appertains to the common Law, be that prosecutor such a Suit, is in case of præmunire: for this there is alledged in the margin, 5 Ed. 4. fo. 6.*

Before I was stopped with what is thus set down, and what I find affirmed by others to the same effect, I was ready to say, That it must be a very forc't Streining of that Statute, that will be able to wring such a sense out of it. But, who am I, that I should oppose my obscure meaness, to the authority of so great a person? May I have fair leave therefore, to offer only a few things to be considered of touching this matter, in behalf of the Ecclesiastical Jurisdiction,

tion; and the Judges belonging to the same? And first, whereas it is said, that by the word [*subi*] in the Statute is intended *Curia Episcoporum*: I refer the Reader to what has been before spoken of this particular thing; and further, I may now reasonably posit one thing observable in the very Statute it self, that may lead us by a more certain hand to perceive, what this word [*subi*] has a reference to, and what it has not. For, whereas in the aforesaid Statute of *præsumunt*, Anno 16. Richard 2d. cap. 5. It is Ordained, That none shall purchase or pursue in the Court of Rome, or (elsewhere), any Processes, Bulls, &c. nor the same bring within the Realm, viz. these His Majesties Dominions. This (be it spoken under correction) cannot rationally be intended *de Curia Episcoporum*, here within this Realm; the reason is plain, because *Curia Romana vel alibi*, where such Processes and Bulls &c. are purchased and pursued, and from whence they are brought within the Realm; these, I say, must be somewhere out of the Realm (for the bringing in of a thing, excludes the being of that thing there already) but the Bishops Courts are within the Realm; and none of these Processes brought into the Realm, can be from them; and therefore this word [*subi*] has no reference to, nor can it be intended of them.

Add hereunto, That the occasion inducing this Statute, and recited in the preamble to it, seems not all to favour this sense of the word. The Comyns in Parliament having with great vehemency and earnestness, represented the several Grievances the Kingdom lay under, among others, these are especially mentioned, viz. The Popes Excommunicating of Bishops for executing the Kings Commandments;

the Popes translating of them from See to See; sometimes out of the Kingdom against their own, and contrary to the Kings Will. The Lords Spiritual being therefore demanded (as the Lords Temporal had been before) what their Advice and Will was in these cases: The Archbishops and Bishops and other Prelates, openly disclaimed the Popes insolent carriage towards the King, and His Subjects; and declared, That they would, and ought to stand with the King in these cases, in lawfully maintaining of His Crown, and in all other cases touching His Crown and Regality, as they be bound by their Allegiance. Whereupon (sayes the Statute) It is Ordained and Enacted, That if any purchase or pursue, &c. from the Court of Rome, or elsewhere, &c. May I not here well demand, what relation either in the occasion, or sense of the Statute, can be made up betwixt Bishops Consistories, and this word [*Alibi*]? Bishops in their Jurisdictions were troubled by the Pope; as the King Himself was in the right of His Crown; both are complained of, both redressed by this Statute: How can that which is the Grievance complained of in the preamble of the Statute, come to be the thing aggrieving in the latter part of it? The truth is, provision is here made against the setting up, and abetting of all Forreign Authority; but Domesticall proceedings in Ecclesiastical Courts, are not related to. This I am confident to affirm, by this Authority following, The preamble (sayes my Lord Coke from Pl. Com. fo. 369. Stowells case) in every Statute is to be considered, for it is the Key to open the meaning of the makers of the Act, and mischiefs which they intend to remedy. Also from a case 4 Ed. 4. fo. 4.

§ 12. The same learned Judge declares thus—
Every Statute ought to be expounded according to the intent of them that made it, where the words thereof are doubtful and uncertain, and according to the rehearsal of the Statute; and there a general Statute is construed particularly, upon consideration had of the cause of making the Act, and of the rehearsal of all the parts of the Act, &c. 4 Instit. cap. 74. It is a general Rule allowed by all Laws in construction of Statutes, *Quamvis lex generaliter loquatur, restringenda tamen est ut cessante ratione & ipsa cesset, cum enim ratio sit Anima vigorque ipsius legis, non videtur Legislator id sensisse quod ratione careat etiamsi Verborum generalitas, prima facie aliter suadeat: Idem.* Ibidem.

And for the Book-case related to, and the inference made therefrom, hear what a learned person has delivered very fully and appositely concerning that: (not in answer to this Judges opinion) for he wrote many years before him; but to invalidate an Assertion of the same nature with this, and from the same Book-case, viz. 5 Ed. 4. fol. 6. *premunire.* and made by one he then contended with) *This case does but speak of the Excommunication by a Bishop, and not of every dealing whatsoever in a matter belonging to the Kings Regality; and what if it had been twice so adjudged, both of them in such corrupt times, when as the Royal Prerogative of the Kings of this Land to be Supreme Governors in all Jurisdiction Ecclesiastical, due to them in Right, and by Gods Law, was not de facto united to the Crown:*

For

For the Bishops then did not claim their Jurisdiction Ecclesiastical, next and immediately under God, from the Crown, as now they do; but seeing this part of Regal power, is now no less truly and fully vested in the Crown, than is the Temporal; so as the Laws allowed for the Ecclesiastical Government, are termed by sundry Parliaments, the Queens Ecclesiastical Laws, and Laws of this Realm, as well as those that were first originally made here: And the Bishops are proved to have their Authority and Jurisdiction Ecclesiastical derived down unto them from the Queens Highness, under the Great Seal of England. Is it then the like reason, still to comprize their Jurisdictions and Courts under that word of [Alibi] as if their Courts and Jurisdictions were not now the Queens, nor yet belonging to Her Regality? Cosen. Apol. p. 3. ch. 7.

Furthermore, the holding plea of a matter belonging to the common Law by an Ecclesiastical Judge, (so constituted as he ought to be, and now is) does not tend to the disinheritance of the Crown; that is, not to the impairing of any Regality, Power, or Preheinance belonging to the same, and therefore cannot be the crime of *præmunire*. The Statute 25 Hen. 8. cap. 21. declares concerning whom, and how offending the Statute of the 16 Richard secundi, was framed, namely, such as sue to the Court of Rome against the Kings Crown and Dignity Royal; one Statute best explains another. So then, where the Authority that is acted by, is the same, a mistake in the matter to be proceeded upon, or manner of proceeding in, does not infringe that authority: The reason is, because the Kings authority empowering to act, is still acknowledged; and what is judicially done thereby, proceeds by power derived from Him,

Him, not from any power set up against him. I presume it will be readily granted, That the upholding and securing the Kings Supremacy in all causes, and over all persons, is that, which principally, if not solely, is aimed at by this Statute: And then it plainly follows, that where that Supremacy is maintained, no breach of that Statute can be made, nor penalty incur'd by any, for a mistake only of the matter, that any Plea (in Subordination to the King as Supream) is held upon.

The worst that is to be said in this case, is this, That he who being a spiritual Judge, does take cognizance of any temporal matter, offends in going beyond his Commission; and truly this is bad enough, but not so bad neither, as to bring under the guilt of *præsumptio*: If it were, observe the consequence; what that would be; for it would as certainly and unavoidably expose a temporal Judge to the penalty of a *præsumptio*, if he proceed to hear and determine in a matter of Ecclesiastical cognizance (because that is beyond his Commission) as it would expose a spiritual Judge to the same penalty, that he intermeddles with causes of temporal cognizance; for observe well what *Bracton* sayes in relation to both Jurisdictions, and the proper Judges of each ——— *Cum diversi sint hinc inde Jurisdictiones, & diversi Judices, & diverse cause, debet quilibet ipsorum imprimis estimare, an sua sit Jurisdictio, ne falsem videatur ponere in Messum alienam.* Again, *Non pertinet ad Judices sæculares, non pertinet cognoscere de iis quæ sunt spiritualibus annexa sicut de decimis, &c.* *Bract.* l. 5. c. 2. apud Hookerum *Ecclesiast. Pol.* lib. 8. p. 218. I may be thought to have made a strange, confident, and odd inversion upon these

two cases; but for my share, freely I do acknowledge, that it is above the reach of my reason, to conceive of any difference herein; for as both Spiritual and Ecclesiastical Courts are now constituted, deriving from the same Regal Supremacy, that the Temporal Courts do; the consequence is as good on one hand, as on the other.

Indeed I should not have exposed my self to the censure of being thought too bold in the concerns of Temporal Courts, and Temporal Judges, especially in such an inversion as this, so lyable to be frown'd upon: But the truth is, I found it made to my hand, by the person whose name I have often used, and whose Authority I much depend upon: *Is not (sayes he) the Prerogative Royal in and for causes Ecclesiastical, as high and as rightly seiled in the Prince, and incident to Her Highness Crown and Regality, as the same is for Temporal power and authority? What cause is there then, seeing [seu alibi] in the Statute signifieth (in true construction) any place whatsoever besides Rome: That every holding Plea by an Ecclesiastical Court, of a matter wherein it ought not to hold, should at this time be reckoned a thing contrary to the Queens Regality, more than dealing in any Ecclesiastical cause, should be in any temporal Court at Westminster? for no Statute of provision or premunire, assigneth these for causes; which have indeed, grown since by collections, whilst the Popes usurpation was continued in the Land. Against which oftentimes, the Remedy by prohibition could not serve the turn: Cosen. Apol. par. 3. ch. 7. p. 87.*

But admit the worst, let there be a disparity allowed, let the failing be on the Ecclesiastical Judges side, yet still he is the Kings Ecclesiastical Judge; and

And there is a favour alwayes on a Judges side, so far as to presume, That he is fit to Act in what he is appointed to; and that he does Act according to what he is best informed of, by his skill, and from his conscience. *Sacrilegii instar est dubitare an is Dignus sit, quem Imperator elegerit*; That persons merit and integrity is not to be doubted of, whom his Princes will has appointed to any publick Office and Employment, say the Emperors *Grat. Valent. & Theod. in Leg. Tertia. C. de crimine Sacrilegii*. Now it is not to be rationally supposed, that any one exercising the Office of a Judge, will designedly and purposely hold Plea of such a cause, which he either knows to be, or is propounded to him as, belonging to Temporal cognizance: But it may so happen, that by nearness and coherence of one cause with another, that which indeed is a Temporal, may be supposed to be an Ecclesiastical cause; and if an Ecclesiastical Judge, minding to do his duty, as the nature of his office doth require, do yet by resemblance, and near coherence of one cause with another, proceed in that which is Temporal, shall this presently cast him under a Præmunire? That is, shall the exceeding some bounds and limits that the Prince (under whom he exercises Jurisdiction) has prescribed to him, bring him under such punishments, as the very enemies and underminers of his State are to endure? This certainly were very harsh and rigorous. I know nothing more to be declined, than such an Office, where the exercise of it puts a man into that ticklish and tottering condition, That he is ready every day (without that exact circumspection, as is morally impossible; for the carefullest man alive alwayes to have) to fall into the greatest penalties and dangers.

It has been said, That a corrivality betwixt the Ecclesiastical and common Lawyer, has still made the one seek his own elevation, by the depression of the other : But here, the common Lawyer has got an insuperable advantage over the other; for let him but hold to this Opinion, and by his Authority make it good, That the bare holding Plea of a Temporal cause in an Ecclesiastical Court, makes liable to the penalties of *Præmunire*, and the contest is at end: There will then be few, that will care to study the Ecclesiastical Laws; fewer, that will dare to execute any Ecclesiastical Jurisdiction.

A grave and sober person delivers his mind touching this matter, with a great deal of ingenuous freedom and truth : *Hoc Austerrum supplicium* (speaking of *Præmunire*) *aliqui Jurisperiti nostri, Lucri & Ambitionis æstu accensi, verborum, quæ in uno Statuto, observant generalitatem, ad quemvis levem Judicium lapsum, præsertim Ecclesiasticorum, nimis violenter extendunt, sed hic eorum candorem desideramus, aliorum etiam inscitiam ingenuum.* Dr. Cowell Instit. de Publicis Judiciis, Sect. 43.

King James, a wise and discerning Prince, easily discovered the Grievances that this profession laboured under, and was pleased earnestly to concern himself in redressing of them. This great King speaking of the usefulness of the Civil and Canon Law among His own Subjects in matters of Pyraey, Wills, Marriages, and things of like nature, proceeds thus—*And this Law has been so much encroached upon, since my coming to the Crown, and so had in contempt, that young men are discouraged from studying it, and the rest weary of their lives that do profess it, and would be glad to seek any other craft*.*

craft*. And some pages after in the same speech, when He comes to give His particular charge to the Judges, he has these words, *What greater misery can there be to the Law, than contempt of the Law; and what readier way to contempt, then when questions come, what shall be determined in this Court, and what in that? whereupon two Evils do arise, the one, that men come not now to Courts of Justice to bear matters of right pleaded, and Decrees given accordingly: But only out of a curiosity to hear questions of the Jurisdictions of Courts disputed, and to see the event, which Court is like to prevail above the other; and the other evil that does arise, is this, That Pleas are turned from Court to Court, in an endless circular motion, as upon Ixions wheel; and this was the reason why I found just fault with that multitude of prohibitions. And then having given a notable instance relating to what He had before spoken of in the concern of Ecclesiastical causes, and their being turn'd off, and tossed from Court to Court, He gives this direction to the Judges—Therefore the only way to avoid this, is, for you to keep your own bounds, and nourish not the people in contempt of other Courts, but teach them Reverence to Courts, in your publick Speeches, both in your Benches, and in your Circuits: Such was the rare providence of that wise King, to keep up the Esteem of the Ecclesiastical Courts, and with fair countenance, and good encouragement, to cherish the Professors of the Ecclesiastical Laws; for the Ecclesiastical Laws are such, that, as Himself is pleased to testify in another place of the same Speech, in many cases cannot be wanting in his Kingdom: Not permitting any encroachments to be made thereon; much less, that the Professors and Judges thereof*

* R. James's Speech in the Star-Chamber to the Judges, about the 14th year of His Reiga.

should be terrified at every turn, and awed with the heaviest poenal inflictions, upon the least irregular motion, and undue proceeding; especially since other milder, yet as effectual means are provided to rectifie such irregularities, and reduce them to the right course again.

For the wisdom of our Princes, has by expresse provision of Law, so well ordered both Jurisdictions, that as both flow from them, so both shall be kept (to prevent confusion in either) within their proper bounds; and therefore if the Ecclesiastical Judge intermeddles with any thing that appertains not to his Jurisdiction, the same Royal Hand that gave forth other things to him, restrains him in that. And thus by Writs of Prohibition, the Ecclesiastical Judge is stopped from proceeding in that which is reserved for another Tribunal. And if it were not thus, to what end would Prohibitions serve? wherefore were they invented? why should so solemn a proceeding be, before they are granted? why so long debating and consulting, before they cease and lose their force? Lastly, why not laid aside as superfluous and needless things, after *Premunire* was established?

In the third year of King *James*, certain Articles of Complaint were Exhibited by Archbishop *Bathurst*, before the Kings Majesty, and His most Honourable Privy Council, touching Abuses in granting Prohibitions. The matter mainly canvassed betwixt the Judges of both Jurisdictions, was, touching the right stating and setting the reasons and grounds of granting Prohibitions: All along which contest, there is not any the least mention made of Prohibitions granted with respect to the persons who

who were impleaded, but only on the Account of the incompetency of the matter or cause which they were impleaded upon; whereas it is acknowledged on both sides, that where a matter truly appertaining to the Temporal Jurisdiction, is brought into Plea before the Ecclesiastical Judge, there any further proceeding in the same, is, and ought to be restrained by the Writ of Prohibition; but it is not said at all, that the penalty of *Pramunire* is incurred thereby.

And here let me entreat the Reader to fix his eye and understanding a little more intensely upon that which now follows: In the twenty fifth and last of those Articles, it is thus set down*: — *Whereas for the better preserving of His Majesties two Supreme Jurisdictions before mentioned, viz. the Ecclesiastical and the Temporal; that the one might not usurp upon the other, two means heretofore have been of ancient time ordained, that is to say, the censure of Excommunication, and the Writ of Prohibition; the one to restrain the encroachment of the Temporal Jurisdiction upon the Ecclesiastical, the other of the Ecclesiastical upon the Temporal: We most humbly desire your Lordships, that by your means, the Judges may be induced to resolve us, why Excommunications may not as freely be put in use for the preservation of the Jurisdiction Ecclesiastical, as Prohibitions are under pretence to defend the Temporal, especially against such contentious persons, as do nittingly and willingly, upon false and frivolous suggestions, to the delay of Justice, vexation of the Subjects, and great scandal of Ecclesiastical Jurisdiction, daily procure, without fear either of God or men, such un-
due Prohibitions as we have heretofore mentioned.*

* *Vid. Sir Ed. Coke, second part of the Institutes of the Laws of England, p. 617.*

At the reading of this Article, I was in great expectation what Answer would be given thereto, considering that the business of restraining either Jurisdictions encroaching on the other, was thus brought to a short and plain issue; for so it seems, that if either the Ecclesiastical Court encroached on the Temporal, or the Temporal Court encroached on the Ecclesiastical, the coercive means applyable for the restraint of either, were respectively these two; viz. the *censure of Excommunication*, and the *Writ of Prohibition*; but *Premunire* is not mentioned at all.

But come we to the Answer it self, and therein we find a full and ample concession of all that is set down in the Article, and so, as it is set down there; what the Ecclesiastical Judges had desired to be resolved in, is granted to them according to the very stating thereof proposed by them; Take the Answer in the very words thereof set down by the same Author——*The Excommunication cannot be gainsaid, neither may the Prohibition be denied upon surmise made, that the matter pursued in the Ecclesiastical Court, is of Temporal cognizance; but as soon as that shall appear unto us judicially to be false, we grant the consultation.*

A thrifty improver of Advantages, would find this concession useful to him, in making and urging many inferences from thence to serve well his purpose; but the intelligent Reader cannot but have his thoughts full of them, and I shall therefore forbear the proposing of any; only this I say, That by what was set down in the Article, and by what is declared in the Answer to it, there appears plainly, That *Encroachers* on the Spiritual Jurisdiction, are

as subject to Excommunication, as Encroachers on the Temporal Jurisdiction are subject to Prohibitions. That which my present design leads me to, is to conclude from hence, That since Prohibitions are by Law the means of restraining any Encroachments on the Temporal Jurisdiction, therefore *Praemunire* does not lie in that case. And indeed how should it? for is not every Ecclesiastical Court, the Kings Ecclesiastical Court? and the Laws Ecclesiastical, are they not the Kings Ecclesiastical Laws? And if in execution of these Laws by the Kings Ecclesiastical Judges, there should happen any exceeding of due limits in those Courts (as who can say of any Court that it never exceeds?) yet *Praemunire* cannot lie thereupon; for, as I may very well apply that which King James said (and that Speech of His which I mentioned before) when some busie Spicklers were alive and forward in fixing a *Praemunire* upon the Officers of the Chancery, No *Praemunire*, says He, can be granted, but at the Kings Suit; and how can the King grant a *Praemunire* against Himself? In the Court of Admiralty, many more Prohibitions are brought, than in the Ecclesiastical Courts. There is a greater vicinity and likeness betwixt the matters tryable in that Court, and those tryable at common Law, and consequently greater occasion and probability of mistaking: Now certainly such frequency of Prohibitions, with the consequences of them, would be very dilatory and tedious; if the more compendious way of *Praemunire* were effectual; and why not *Praemunire* lie here, as well as in the Court Christian? This is another Court, or a Court under the large meaning of [*Alibi*] proceedings are divers therein from those of the common Law; and

and I do not remember to have read any *Præmunire* brought for suing in the Admiralty, excepting in two cases, the one 38 Hen. 6, the other in 9 Hen. 7. Nevertheless, saith Dr. Zouch, although it be said that two *Præmunires* were brought upon such occasions, yet it doth not appear, that any judgment was given upon them: See more to this purpose, in his Jurisdiction of the Admiralty asserted.

But never to mince the matter, Is it not here that the Shooe wrings? It is the Ecclesiastical Court, and that is become the great Eye-fore; a thing that will not be looked upon as an offence in another Court, is beheld by men through a magnifying Glas in this: There are too many that cannot away at any hand with a Bishops Jurisdiction, and what they do not like, they easily quarrel at: hence are all the prejudices, that upon very little occasions are taken up, and yet, though good reasons be given, are hardly laid down again. The Spiritual Court shall be sure to have all the opprobrious, and all the scurrilous imputations fastned to it. Men love those sins too dearly, that are punishable there; and they love to hold too tenaciouly those rights from others, that are recoverable there: Now no Delinquent loves that Judge who corrects him for the sin he loves to continue in: or will force from him the rights of others, which he has no mind to part withall. I wish it have not been from these, or any other such grounds, that the Ecclesiastical Jurisdiction has had so many opposites; and that there has been such lying at catch, and waiting for advantages against it, so as to terrifie with the name of *Præmunire*, whensoever men have a mind to say there is (or that there is indeed) some real miscarriage therein.

Thus

Thus far I have enlarged, in making good the second Proposition ; I shall collect together under one view, what has been delivered thereon. It was not the matter of any civil contract, but a cause indisputably of Ecclesiastical cognizance, that was the ground of these proceedings, and therefore no *Premunire* imputable on that Account ; and admitting the contract had been the ground of these proceedings, yet for the reasons before shewed, no *Premunire* could have been incurr'd hereby ; and therefore the Bishop of *Waterford's* Jurisdiction in the case before laid down, was legally founded in respect of the cause proceeded upon.

PROP. III. The Bishops Jurisdiction was legally managed in this cause, against these persons, in respect of the manner observed and followed therein. It was in favour to the Mayor and Sheriffs, that a civil intimation was given to them from the Bishop, desiring their meeting with him. This civil intimation was (I will not say despised) but not answered with a correspondent civility in them ; for they did not give the meeting to the Bishop, which he desired they would. And yet the end of this desired meeting, was in order to a fair accompting for Moneys received by them for the Churches use, and for making good the reparation of the Body of the Cathedral Church : They not giving (I say) the Bishop this desired meeting, some competent time afterwards (I think a weeks space intervening) Process was caused to issue forth, to call them to appear before the Bishop in his Consistory, on a certain day after following.

I cannot go forward to the sequele of this proceeding thus begun, without making some little animadversion on these persons (I shall forbear giving it any worse term) disingenuous carriage, in their *Petition of Complaint Exhibited to the Lord Deputy and Council* : In the first Section of which, they say, *That they the Petitioners about Ten of the Clock in the Forenoon, on the twentieth of July last, received a Verbal Summons from the Apparator of the Diocess of Waterford, to Appear at the Consistory Court of the said Diocess, before the Lord Bishop of Waterford at Two of the clock the same day* —

The disingenuity that I observe herein, is most notorious; for first, they speak of a *Verbal Summons* from an Apparator; than which, nothing can be more ridiculous (shall I say) or more false. 'Tis both contrary to practice for any *Verbal Summons* to be given, by an Apparator to any person; and it is of no force, nor validity, if any such were given; and it is contrary to Truth, that any such was given. The Bishop of *Waterford* better understands both what is the ordinary practice, and what will hold good, and is justifiable in practice; than to order his Apparator, to call any of his Diocess before him, (without a formal Process) by *Verbal Summons* only.

Next, it is said, *That this Verbal Summons was given at Ten of the clock in the Forenoon, to appear at Two of the clock in the Afternoon of the same day.* Here is disingenuity again; There being no Accord betwixt what is thus alledged, and the Acts of Court that have been expedited in this proceedings; I have made it my endeavour carefully to consult these, and find, that an Original Citation issued out of the Registry

gistry against these persons, to appear on *Wednesday*, the 22^d of *July*, betwixt the hours of Eight and Ten in the Forenoon of the same day: And I find, that this Citation was executed on the persons of these men, by one *Michael Curren*, the usual Mandatary of the Court (according as he declared upon Oath) on the 21 day of the Month of *July*, which was *Tuesday*. This is the first Act of proceedings in this cause, and if we will credit that (as it is attested by the Register, a Sworn Officer, and Notary Publick) then the first Section of the Petition, as it relates to these proceedings, contains nothing of Truth in it.

And as little there is in the first part of the second Section; for, whereas the Petitioners say, *That on the Two and twentieth of the said Month, they were Summoned to Appear at Ten of the clock at the said Court the same day*. — The falsity of this appears plainly, by what the aforesaid Mandatary upon Oath declared, namely, That he had Summoned them on the *Tuesday*; which *Tuesday*, was the One and twentieth, not the Two and twentieth of *July*. And the ground of complaint had been tolerable indeed, if the time of their Summoning, and time of their Appearance had jump't together at one and the same hour.

I now go on further, in drawing out the course and series of this Judicial proceeding. The day being come, that is to say, *Wednesday* the 22^d of *July*, at which time the forementioned Process was returnable, and the Bishop sitting in his Consistory, the persons Summoned were called upon, who not Appearing, their Contumacy was accordingly accused, and upon the Accusation, by Decree of Court, they were pronounced contumacious.

Q^a The

The Legality of this manner of proceeding thus far, is sufficiently known by common practice; and Lindwood gives this Rule (*Constitut. Provincial. Item omnes: de Judiciis. ad literam F.*) *ubi aliquis apprehensus est personali citatione, si sic citatus personaliter non compareat efficitur vere contumax.* And the 70th Canon of the Church of Ireland, allows a Contumacy to be affixed to that person who neglects to appear upon citation.

I have heard, that there was afterwards something alledged on their behalf, why they could not appear upon that Summons; and something they say in the second Section of their Petition to this purpose: *As, that a Council of the City had been appointed against that time to consult about an Answer to a Letter sent by the Lord Deputy.* But two things come here into observation, whence it seems probable, that this matter was made use of at a pinch, and so to serve as a little evasive shift, when there was nothing else that could seemingly help them; for as they mentioned in the first Section of their Petition, this Letter was delivered to them from the Lord Deputy the *Monday* before, now the answering of that, would not, I suppose, be delayed until *Wednesday*; and that very hour of *Wednesday*, when upon due Summons before personally served, they were to appear at the Bishops Consistory. But, indeed, it is more then to be presumed, that the appointment of their Council (if any such were appointed) then upon *Wednesday*, and at that hour was designed as a colour wherewith they might be helped to elude their appearance upon the said Summons.

Moreover, had they been really engaged in so necessary and earnest a business, yet that could give no hindrance; but they might have sent some creditable person to make *Affidavit* of their being so employed, which thing, in all probability, would have caused a respiting of their Appearance at that time: *Yes, but they did send a Messenger* (says the Petition) *who acquainted the Bishop with the reason of their not appearing*: But if any such Messenger were sent, he stood there *incognito*, and was as a Mute in the company; for no one did, nor offered to make *Affidavit* thereof.

Add further, *Wednesday morning at Ten of the clock was the time they were called to appear at* (says the very Petition it self) but the tenor of the Citation, is betwixt the hours of Eight and Ten: They were busie at Ten of the Clock to dispatch their return, yet the Post is usually gone at that time. They were not busie at Eight, or between Eight and Nine, and then too, their Appearance had been good. What shall we think hereof? Truly by all that I can conceive hereof, there could be no sufficient Allegation grounded hereon, to free them from being in contempt for Non-appearance upon Legal Summons.

But allow they had been really aggrieved by this proceeding, and that there being declared contumacious, had been illegal; Remedy there was for this; a regular course might have been taken, which if applied to, would have given redress herein: An Appeal to the Archbishop of the Province, would have done both these: This the Bishop would not, nay, could not deny them: And if the ground of their Appeal were justifiab'e, they would by that means

means have been rescued from the Bishops, and protected under the Archbishops, Jurisdiction. This course, I have been told, was suggested to them; but the Truth is, it relished too much of condescension, to give any shew of submission to Ecclesiastical power: High spirits will rather want, than be beholden for, help, to that hand which they do not like of. Perhaps these persons, lifted up with an Opinion of their Office, as they thought themselves a degree above the being proceeded against by a Bishop, so it would be beneath them, to supplicate for any relief from an Archbishop.

Well, upon this, a second Process issues out, to call them to Appear, and shew cause, if they had any, why for their former contempt, they ought not to undergo the penalty of a censure. Upon this Summons they appear, yet not a ledging any material, or rationally conclusive Plea, for purging their former contempt, they are upon the account thereof enjoined an easie penance: This only; to make an acknowledgment of their contempt and disobedience, and to promise future Obedience.

The Heats before conceived in these mens breasts, and hitherto suppressed, now break out with some violence: They fume and chafe at this imposition, and disdain, That Men in their Dignity, being the Kings Lieutenants (so they stiled themselves) should be brought to make a publick acknowledgment and submission.

I am verily perswaded, that if any reasonable application had been made to the Bishop by these persons, and some private acknowledgment and submission tendred, an easie composition of what had passed, would have followed: But the doing of this

was so far from their Resolves, that a friendly advice, and proposal thereof, was with scorn rejected. The time appointed for making this Acknowledgment comes; and as it came, so it passed away without any observance of what was enjoined.

This repeated contempt might have disordered a well composed temper, but it had no power upon the Bishop; alter him a little it might (how could it well be otherwise) but not so as to exasperate that spirit of Lenity, which (as he ought, so) he alwayes moderated himself by, in matters of censures, and other parts of corrective Discipline. It directed him indeed to reflect on the Authority he was invested withall, and how scandalously it was despised; and that the Rod was to be taken in hand, and something at least to be done in a way of correction, that men might not be disobedient and refractory, and then think they had done well in being so; Authority contemned, and passing with impunity, ushers in both Atheism and confusion.

Wherefore that more severe and dreadful censure of Excommunication being laid aside, it may be (as for other reasons) so upon this consideration likewise, that they might not be discapacitated in the execution of their Offices. This great censure, I say, being laid aside, another is made use of; that with ingenuous Christians might probably attain the end intended, being tempered with more mildness and lenity. The censure was this: *The persons so offending were suspended ab ingressu in Ecclesiam, till such time as they had made publick satisfaction for the scandal given, by their contempt and disobedience.*

If

If it should be here said, That the censure of suspension *ab ingressu in Ecclesiam* (though it be a milder censure far than the other) was improperly inflicted in this case, because Excommunication is the poenal coercion appropriated to this crime of contempt; and if that contempt were really so scandalous, and notorious, why was not the penalty inflicted, *pro rata culpæ*? Besides, there is seldom mention of this kind of censure, but in one case, and that set down in the Statute Law, viz. 6 *Eduard. sexti. cap. 4.* imposed on such as are Brawlers in Churches and Church-yards; but of Excommunication it is said—*Aliarum censurarum Ecclesiasticarum una, viz. Excommunicatio infligitur pro contumacia sola, vel non comparendo in iudicio, vel non parendo mandatis Ecclesie.* Dr. Cosen. Polit. Eccles. Anglic. Tab. 5. A. Which being so, and not applied in the case where it ought, thence the proceedings in this cause become irregular and illegal.

To all this it may be returned, first, That lenity is there unhappily placed, where they that have benefit by it, would turn it to the prejudice of those that bestow it. Besides, Admit that the censure of Excommunication might justly have been inflicted in this case, on these persons (which most certainly might have been) yet the not imposing that, does not vitiate the proceedings, and make them become irregular and illegal; for this suspension is a kind of Excommunication: and although by the Statute, it seem peculiarly appropriated to the crime of *brawling and quarrelling in Church, or Church-yards*; yet that, I conceive, is to be understood in this sense, That no other censure shall be inflicted upon that crime, but the same censure may be inflicted on other

other crimes besides, and so consequently on this, which it was inflicted on here. Suspension I said was a kind of Excommunication, some call it *Minor Excommunicatio* (*Cowell, word. Suspension*) it is a degree below that which is usually called by that name; for a man being deprived of a liberty of coming to Church, he is thereby deprived of all publick communion with the rest of Gods faithful people, in partaking of the Word and Sacraments, and all other divine Offices. It is called by some *Interdictio divinarum illata in personas*, to distinguish from that which is the interdiction of a place. *Zouch. de Jure Ecclesiastico. part. 2. sect. 8.*

There are two things wherein this censure of Suspension differs from Excommunication properly so called (I speak here only as to things *in foro externo*, in respect of outward practice and proceeding thereupon) 1. Because the Secular Arm cannot be implored, or called upon for it. 2. Because it does not render a person, on whom it was imposed, so incapable in sundry respects of Secular matters, as the other does. Nor indeed does the Rule laid down before, so precisely bind the Ecclesiastical Judge to a literal observance of it, that no other censure in such a case may be used instead thereof: But it is within the latitude of his Authority, That if there be hopes of attaining the ends of this greater censure (as the reducing of refractory and contumacious persons) by inflicting the lesser: And if there be a concurrency of other peculiar respects, besides, inducing the Judge to use that lesser, then surely the greater may be abstained from, and the course and manner of proceedings, still be good and justifiable.

I have been the longer in removing this Objection that might be made against the Bishops proceedings, as to the manner of them, in this particular: because I have heard something debated touching the same, and I have had some doubtings thereof in my self; but as this censure was (I verily believe) with great deliberation, and prudent resolve inflicted by the Bishop: so I am now fully satisfied therewith, both in respect of the nature of it, and manner of proceeding to the inflicting of it.

For the coming of things to this head (we must know) was not precipitous, and huddled up all on a sudden: five several Court-dayes were employed in this Transaction: betwixt every of which, fair and competent intervals of time were allowed; although, I must needs say, considering all circumstances, lesser time might have served, Canonically enough, to dispatch a matter of as great concernment as this*: But the Bishop resolved (I suppose) to move circumspectly and deliberatively in what he Decreed, and therefore took time enough for it; and he desired, that they whom he had to deal withall, would be tractable, regular and advised, in what they ought to have done, and so he gave them time enough likewise.

So then, to the inflicting this censure was this matter brought. The passing of which, the publication of it in the forementioned Cathedral, at due time, and in due manner. The particular intimation thereof given to the persons themselves, the grave admonition following to obey the same, and retract their former contempts and refractoriness. All these notwithstanding, the Mayor and Sheriffs the next Sunday following come to Church in an unwonted,

* In the Ill of Man, the Ecclesiastical Judge makes much shorter work; In hac insula Judex Ecclesiasticus, citat, & si it, & infra octo Dies parent, aut carceri intruduntur. Lord Coke, 4. part. Instit. c. 69.

unwonted, strange and tumultuous manner, attended with a confused and numerous Rabble of such as had not used to visit the Church at all; nor would then have done it, but that they were countenanced, nay, commanded, indeed to attend the Kings Sword (such a phrase they used) but such a concourse, proved a disorderly and heady meeting together.

Thus was the Church censure contain'd, baffl'd, trampled upon. Thus was Episcopal power exposed to derision and mockery. Thus was the Kings Authority in His Ecclesiastical Jurisdiction, debased and made vile, by those that gave themselves out to be the great upholders of it, in matters of civil Jurisdiction; and after all, to make a shew of innocency in this whole proceeding, they speed in all haste to complain first, and would have it thought an argument of their being injuriously dealt withall (so destitute were they of any other) because they have got the start, and cry out loudest that they are so. They represent themselves as persons (above any example) the most unjustly dealt withall, and aggrieved, *by strange, arbitrary, and unheard of proceedings.* Their Address was made to His Majesties most Honourable Privy Council in this Kingdom, there they Exhibit their Complaint, thence they expect relief: The Bishop owns the Kings Authority wheresoever, and in whomsoever it is represented, but especially in that High and most Honourable Assembly; and so submits him self and proceedings to the determination, that by their Lordships should be made thereof.

I must not omit that to make sure work, besides this Address, the pretending Complainants, become

Appellants; for they interpose an Appeal *in scriptis*, from the Bishop, immediately to the King; that if one course they had taken failed, the other, at least might be helpful to them. I cannot pass by (although I do but touch at them) the many Errors concurring in this latter Essay: As that first the time of Appealing, from that which they pretended themselves aggrieved with, was lapsed, when this Appeal was interposed. Moreover, that one and the same cause, by the same persons, at the same time, was thus brought to tryal before two distinct Judicatories, which is vexatious, at least, in those that procure the same to be done so.

That the intermediate Jurisdiction was passed by, contrary to the ancient liberties and customs in such cases observed; and which was among other matters digested into Articles and Chapters, confirmed in the Parliament held at Clarendon, in the Reign of King Henry 2d, *Anno Domini* 1164. namely, *That all Appeals in England must proceed regularly, from the Archdeacon to the Bishop, from the Bishop to the Archbishop; and if the Archbishop failed to do justice, the last complaint must be to the King to give order for redress; that is* (says my Lord Primate. Bramhall, *Vindication of the Church of England*, p. 75.) *by fit Delegates.* See to this purpose, *The Statute of Appeals*, 24 Hen. 8. cap. 12. And this contrary to the 56 Canon of this Church, *whereby the pain of Nullity is inflicted on all Acts, which are sped in Appeals, where the Jurisdiction intermediate is passed by; for although it is true, That the Kings Authority ought not to be disputed, or disobeyed by any Subject, where it does appear to be; yet that must ever be esteemed a true and regular obedience, which the King*

King himself by Law has prescribed, it should be.

And lastly, supposing the Appeal entred by them to have been antecedently good, that is, good in respect of time and manner observed in interposing the same; yet it is not good nor valid in its consequences, because the time appointed for these pretended Appellants to receive their *Apostles* (that is, *dimissory Letters* from the Bishop or Judge *Aquo*, intimating his deferring and yielding to the said Appeal, and assigning of time for prosecution of the same) is long since passed away without doing either: And besides this slipping the *Terminus Hominis*, that is, the Term limited and appointed by the Judge, from whom the Appeal is. Moreover, the *primum fatale juris*, for prosecuting and ending of Appeals, is likewise lapsed; and no impediment can be warrantably alledged in favour, and on behalf of the Appellants, so as to enjoy benefit of restitution into, and being allowed their *secundum fatale*, or second year for prosecuting their former Appeal.

No impediment, I say, can warrantably be alledged by these Appellants, to capacitate them for this restitution; for although the matter, and pretended Grievance complained of against the Bishop (at the hearing thereof) before the most Honourable Council, was referred to two Honourable Members of the same; and in the issue thereof, from those Honourable Referrees something like the nature of a compromise was made between both parties (which might seem sufficient to stop the running on of these *Fatalia Juris*) namely, in respect of the Complainants, their engaging to perform what belonged to them.

them to do ; and had been required from them by the Bishop, as, to give account of the Money received for the Churches use, and making good the Reparation of the Body of the Cathedral, and other particular matters before mentioned, and in respect of the Bishop his promising to withdraw his proceedings against them thereupon : Although, I say, this seeming compromise might appear as a sufficient ground of granting admission to the *secundum fatale*, supposing the first to be irrecoverably past : Nevertheless it is not at all sufficient thereto ; the reason is, because conditions were not performed on which this respite, and seeming compromise was grounded, and this non-performance of conditions was on the Appellants own part. The Bishop performed more than his part in desisting hitherto from any further proceeding against them : And they not performing the conditions required on their parts, not then, nor since, nor to this very day (which yet they ought to have done forthwith) the benefit therefore of the other *fatale* is not allowable to them ; but being incapable of any restitution thereunto, they are really in the *lapse*, and the said Appeal, may be pronounced *pro desertâ*, and no advantage on the Appellants part to be expected therefrom : And if the Bishop should thus pronounce, and resume into his cognizance the whole proceeding again, as there would be both Law and Right enough to justify his so doing ; so there would be a want of both these, and of every thing else, that might be needful to make up a safe and warrantable defence for the Complainants. It is a noted and approved Maxim in poenal proceedings, *That Attempts of all crimes are least capable of favour or lenity.* Upon

Upon the whole view, it sufficiently appears how little of truth or reason this exception against the manner of proceedings, has to bear its self up with-all. Look we upon the crimes censured, they were deeply scandalous and provoking: Look we upon the censure inflicted, 'twas comparatively to the crime, and a greater censure that might have been inflicted, moderate and easie. Look we to the manner of proceeding, it was proper, and without the omission of any one requisite or formality that of right ought to be used therein. Look we to the Order observed, It was not loose and confused, but grave and regular. Look we upon the whole cognizance it self, This was not hasty and precipitous, but prudentially guided, and proceeding with good maturity and deliberation: convenient intervals of time dividing seasonably every Court throughout the whole Transaction, and preventing any thing of surprize that might be suspected therein. I pretend not much skill to these Affairs; yet being upon the design of searching (as well as I was able) into the whole state of this matter, I have viewed and reviewed the whole *series* of these proceedings, with the several Acts of Court, Decrees, and other matters incident thereunto: And according to the best of what I am able to judge, I cannot find in the same, where to fasten any Error, no not in the very niceties and punctualities of practice, much less in any material point, and essential matter the eof.

And now after all, If Offenders complaints against the forms and prescriptions of Courts, may pass for just Exceptions, and fair Vindications of themselves, we shall have many crimes, but few criminals; many that will be bold to offend, but few that will ever acknowledge

acknowledge their being legally convicted for their Offences : 'Tis high time for persons invested with judiciary power, to look about them, and provide some new wayes of securing the Authority of their judicial proceedings, if every bold attempt to question the legality of them, may pass for a justifiable Plea of not obeying them, or imprint a nullity upon them. When such Offenders, so justly and mildly censured, shall dare openly, to tell my Lord, the Kings Deputy, and my Lords of His Majesties Council (as these men did) That a Bishop, the Kings principal Ecclesiastical Judge, within his own Diocess, has put the Inhabitants of a City into very much disorder by such arbitrary, and unheard of manner of proceedings (when all the disorder proceeded from themselves, and no other, but legal proceedings have been used herein) this comes very near the saying, That they are wronged in spite of any thing that can be said against it ; and that if they to whom they make their Application, will not believe and redress them (as they would have it themselves) they will venture to speak as hardly of them too : They will commit faults, and then complain, and be pettish and froward, if they be not stroak't and soothed up in their complaints. He that charges any in subordinate power, with arbitrariness of proceedings, and may escape so, will at the next turn charge as bad upon those that are in superior Authority, if he have but any matter of concern then at stake, and may think to be secure when he does so.

This begins in the Ecclesiastical Courts, but will it end there ? it's to be feared, it will not. Success, impunity and hopes of being countenanced therein, will

will embolden such men to go further, even to pronounce the like upon all judiciary proceedings in Civil Courts, where their persons or interests are concerned, and where they may be heard with freedom and safety of popular approbation; it might pass, for a pretty smooth contrivance, for a Criminal to avoid the force of a judiciary sentence, by first traducing it, and to get free from the Obligation of submitting to what is decreed, by affirming confidently, and standing to it, *That the proceedings were illegal, and therefore not to be obeyed.* If this would serve the turn, who would be such a Fool, as ever to be guilty? or so careless of his own ease, as ever to undergo any punishment? But 'tis worth the wonder of a sober man, to think that any one should shew himself (and believe others ought to think him) serious herein. But in truth, what has preceded, so much out-does this, that all our wonder may be well spent upon it. That men called to answer in Law, should question the known and approved course and proceedings thereof, carries something extraordinary with it; but here is much more; That they themselves should against Law so plainly fore-judge their own cause, and their own persons, as to exempt, both, from what, and to confine them to what Jurisdiction, they themselves best liked of.

The Enquiry into the absurdity, unreasonableness and ill consequences of which, and the evincing the Right of Episcopal Jurisdiction in the case in hand, against any such illegal pretensions and attempts: The putting a new mould about that ancient, and established Jurisdiction, which every pragmatish, pettish, and conceited Novelist is now seeking either

by detraction in his speech, or other crafty Machinations in his practice, first to retrench a little, and by, and by utterly to abolish: has hitherto employed my Thoughts, and my Pen. In prosecution of which design (it is now no more than time, I should tell the Reader so much) I have promiscuously made use of English Statutes, since the time of King Henry the seventh, and some memorable passages of Ecclesiastical Jurisdiction done in England, as well, as what peculiarly relates to this Kingdom. And I cannot altogether deny, but that I have done this for the Necessity; for (setting aside some particular Statutes, relating to the peculiar state and condition of this Kingdom) As to Ecclesiastical Jurisdiction, we here conform in the practice and exercise of it; and in the Rules and Laws it is exercised by, to the same, that are used in England. If I be blamed for this, I protect my self with what a Learned person has collected from Sir John Davys Reports, in Case *de commendam*—*Ex quibus constat Hibernos sese accommodare; non ad iura Anglicana tantum, sed ad Leges Cæsareas etiam, & jura Canonica quatenus ea inter Leges Anglicanas admittuntur.* Dr. Duck, de *Autho-ritate Juris Civilis in Regno Hiberniæ*, sect. 8. To whom I may add the Authority of that greatly Learned Prelate, Primate *Zybert* for to this Chapter of the said Book, as he did to all the rest, he gave his particular Attestation under his own hand. I mentioned at first two ends, which I proposed to my self in this undertaking; these I have had all along in my eye. The one was, that by the best reason I had, and was able to improve, and by the best authority I could find, and was able to produce, I might justify the Right (and in the present case the right

right proceedings of Ecclesiastica Jurisdiction, and so give my self a true satisfaction therein: The other end is, to give a satisfaction to others also; for what concerns my self, I have sufficiently attained it; for what concerns others, I have at least endeavoured to do something in Order thereto.

Е Р Я Т А

FINIS

21117

Some mistakings or omissions in Printing, the intelligent Reader may easily observe and correct; And that he may please to do the like in such Lapses, as are either Literal, or tend to vitiate the Sense, they are here in one view set down before him.

ERRATA.

PAge 17, line 7, for Jurisdickions, read Jurisdiction: *ibid.* line 8, for cognizance, read cognizance: page 24, margin, line 2, for Statutis read Statute: page 25, line 29, for in, read is: *ibid.* line 32, for panes read pens: *ibid.* line 34, for sine, read five: page 26, line 4, for vir, read viz. *ibid.* line 8, for tali, read rati: *ibid.* line 27, for sanctis, read sanctio: page 29, margin, Sect. 2, for amplytude, read amplitude: page 30, margin, line 32, for withou, read without: page 32, line 16, instead of propper cause, read a proper cause: page 34, line 13, for Clerii, read Cleri: page 41, line 20, for Regie, read Regia: *ibid.* line 32, for Prerogativa, read Prerogativa: page 44, line 34, for King, read King: page 56, line 26, for bece, read been: page 68, line 15, for cognizanced, read cognizance: page 73, line 12, for powers, read power: page 82, line 4, for has, read had: page 103, line 26, for divers, read diverse.

FINIS.

